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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. [illegible] 1897. 29.

LA ABRA SILVER MINING COMPANY, APPELLANT,

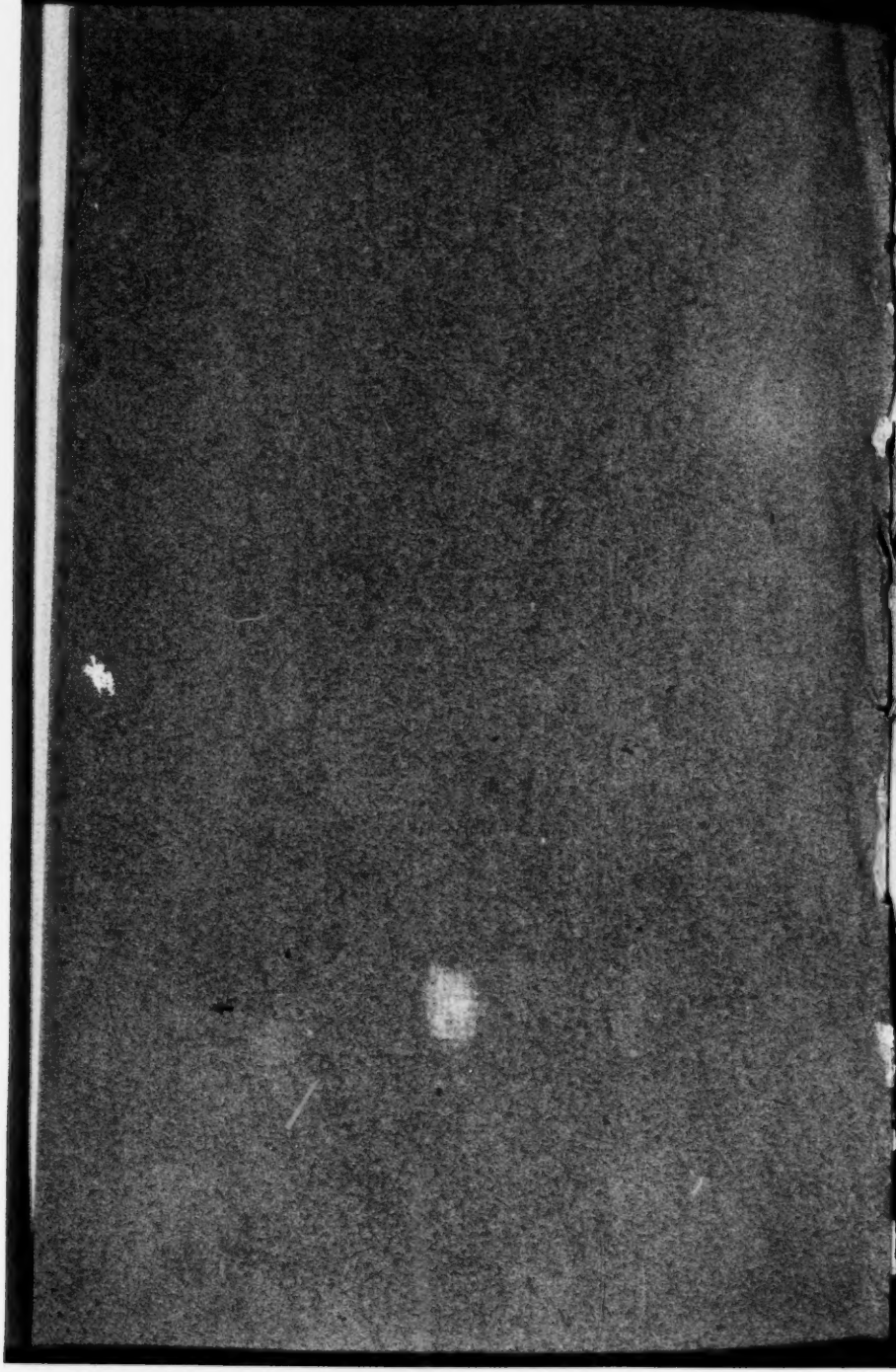
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 20, 1897.

(16,711.)



(16,711.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 498.

LA ABRA SILVER MINING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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COURT OF CLAIMS.

DECEMBER TERM, 1882.

THE UNITED STATES
v.
LA ABRA SILVER MINING COMPANY, George Ticknor Curtis, John H. Rice, Eugene Jones, Sumner Stow Ely, Cyrus C. Camp executor of the last will and testament of Herman Camp deceased, Ellen V. Camp, The American Security and Trust Company administrator with the will annexed of the estate which was of Samuel C. Pomeroy deceased, Edward S. Hamlin administrator with the will annexed of the estate which was of Thomas W. Bartley deceased, Samuel Shellabarger, Jeremiah M. Wilson, Katie L. Hatch, Charles T. Parry, Joseph Hopkinson, Sterling B. Toney, Henry S. Foote executor of the last will and testament of Henry S. Foote deceased, Frederick P. Stanton, Daniel M. Adams executor of the last will and testament of Alonzo W. Adams, deceased; John W. Burke, executor of the last will and testament of William W. Boyce, deceased; George H. Williams; Crammond Kennedy; and Edward M. Harrington.

} In equity, No. 4791

Amended Bill

To the honorable the judges of the Court of Claims:

The United States, by Richard Olney, Attorney-General, brings this, its bill of complaint, against La Abra Silver Mining Company, which is a corporation created and existing under and by virtue of the laws of the State of New York and having its principal office in the city of New York, in said State; George Ticknor Curtis, John H. Rice, Eugene Jones, and Sumner Stow Ely, of the city of New York, and Cyrus C. Camp, executor of the last will and testament of Herman Camp, deceased, and Ellen V. Camp, of Fredonia, who are citizens of the State of New York; The American Security and Trust Company, which is a corporation created and existing under and by virtue of the laws of the United States and having its principal office in the District of Columbia, administrator, with the will annexed, of the estate which was of Samuel C. Pomeroy, deceased; Edward S. Hamlin, administrator, with the will annexed, of the estate which was of Thomas W. Bartley, deceased, Samuel Shellabarger, Jeremiah M. Wilson, and Crammond Kennedy, of Washington, who are citizens of the District of Columbia; Katie L. Hatch, of Plumer, and Charles T. Parry and Joseph Hopkinson, of Philadelphia, who are citizens of the State of Pennsylvania; Sterling B. Toney, of Louisville, who is a citizen of the State of Kentucky; Henry S. Foote, of San Francisco, executor of the last will and testament of Henry S. Foote, deceased, who is a citizen of the State of California; Frederick P. Stanton, who is a citizen of the State of Florida, but whose residence is unknown to your orator; Daniel M.

Adams, of La Grange, executor of the last will and testament of Alonzo W. Adams, deceased, who is a citizen of the State of Ohio; Edward M. Harrington, of Colo, who is a citizen of the State of Iowa; John W. Burke, of Fairfax Court-House, executor of the last will and testament of William W. Boyce, deceased, who is a citizen of the State of Virginia; and George H. Williams, of Portland, who is a citizen of the State of Oregon; and thereupon your orator complains and says:

I.

That on the 4th day July, A. D. 1868, your orator entered into a convention with the Republic of Mexico, a foreign sovereign State, for the establishment of a commission to adjust and determine such claims of citizens of your orator against said Republic of Mexico, and of citizens of said Republic against your orator as had been presented to the Government of either party to said convention for its interposition with the other since February 2, 1848, or as might be presented to the commissioners to be appointed under said convention within eleven months from the day of their first meeting. By the terms of said convention it was agreed that each Government should appoint a commissioner to examine and decide upon such claims and an agent to present and support claims on its behalf and to answer claims made upon it; that said commissioners when appointed should name a person to act as umpire in case of their disagreement upon any claim; that said commissioners should decide claims upon such evidence or information only as should be furnished by or on behalf of their respective Governments, and should decide all claims presented to them within two years and six months from the day of their first meeting; that all claims arising out of any transaction prior to the exchange of ratifications of said convention should, after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible; that your orator and said Republic of Mexico should consider the decision of the said commissioners conjointly, or of the umpire, as the case might be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and should give full effect to such decisions without any objection, evasion, or delay whatsoever; that the expenses of said commission should be defrayed by a ratable deduction on the amount of the sums by said commission on such claims awarded; that, when all such claims should be decided, the total amount awarded in all the cases decided in favor of the citizens of the one party to said convention should be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of $300,000, should be paid, at the City of Mexico or the city of Washington, in gold or its equivalent, within twelve months from the close of said commission, to the Government in favor of whose citizens the greater amount might be awarded, after deducting the expenses of said commission as aforesaid; and that the residue of said balance should be paid in annual installments to an amount not exceeding $300,000 in any one year until the whole should be paid. Said convention, having been duly ratified on both parts, and the ratifications thereof having been exchanged by the parties thereto on the 1st day of February, 1869, was duly published and proclaimed by the President of the United States on said 1st day of February, 1869 (15 U. S. Statutes at Large, 679).

II.

That under and in pursuance of the terms of said convention, commissioners were duly appointed to hear and determine such claims as might be laid before them on the part of the governments of your orator and said Republic of Mexico, to wit, William Henry Wadsworth, by your orator, and Señor Don Francisco Gomez Palacio, and afterwards, and in lieu of said Palacio, Señor Don Leon Guzman, and afterwards, and in lieu of said Guzman, Señor Don Manuel Maria de Zamacona, by said Republic of Mexico. Agents for the presentation of and defense against claims were duly appointed, to wit, Joseph Hubley Ashton, by your orator, and Caleb Cushing, and afterwards, and in lieu of said Cushing, Señor Don Manuel Aspiroz, and afterwards, and in lieu of said Aspiroz, Señor Don Eleuterio Avila, by said Republic of Mexico.

Said Commissioners Wadsworth and Palacio held their first meeting July 31, 1869, and thereafter named Francis Lieber as umpire. Afterwards, and in lieu of said Lieber, said Commissioners Wadsworth and Zamacona named the Right Hon. Edward Thornton, K. C. B., envoy extraordinary and minister plenipotentiary to the United States of Her Majesty the Queen of Great Britain, as umpire. On the 11th day of August, 1869, said Commissioners Wadsworth and Palacio adopted rules regulating the manner of taking testimony in claims before said commission, and requiring defensive proofs to be filed within four months from the closing of proofs in support of such claims. On the 23d day of December, 1869, said commissioners rescinded all said rules regulating the manner of taking proofs, and declared themselves without authority to make such rules. On the 28th day of June, 1870, said commissioners extended the time for taking defensive proofs by the Republic of Mexico to six months from the closing of proofs in support of claims against said Republic.

III.

That before the 30th day of June, 1870, your orator presented to said Commissioners Wadsworth and Palacio, through the said Ashton as agent, 873 claims of citizens of your orator against said Republic of Mexico, aggregating in amount $470,126,613.40 and 144 claims whose amounts were not stated; and the said Republic of Mexico, through the said Cushing as agent, presented to said commissioners 998 claims of citizens of said Republic against your orator, aggregating in amount $86,661,891.15. Of the claims so presented by your orator 330 had been presented to the Department of State of your orator before the conclusion of the said convention. On the 19th day of April, 1871, your orator entered into a further convention with the said Republic of Mexico which was duly ratified, and, the ratifications thereof having been duly exchanged, was published and proclaimed by the President of the United States on the 8th day of February, 1872, which convention extended for not exceeding one year the time allowed said commission by said convention of 1869 for the examination and decision of claims (17 U. S. Statutes at Large, 861). On the 17th day of November, 1872, your orator entered into a further convention with the said Republic of Mexico, which was duly ratified, and, the ratifications thereof having been duly exchanged, was published and proclaimed by the President of the United States on the 24th day of July, 1873, which convention revived said Commission and extended, for not exceeding two years, the time allowed said commis-

sion by said convention of February, 1872, for the examination and decision of claims. (18 U. S. Statutes at Large, 760.) On the 20th day of November, 1874, your orator entered into a further convention with the said Republic of Mexico, which was duly ratified, and, the ratifications thereof having been duly exchanged, was published and proclaimed by the President of the United States on the 29th day of January, 1875, which convention extended until the 31st day of January, 1876, the time allowed said commissioners for the examination and decision of claims and provided that the said umpire should have six months from said 31st day of January, 1876, to determine cases referred to him. (18 U. S. Statutes at Large, 833.) On the 29th day of April, 1876, your orator entered into a further convention with the said Republic of Mexico, which was duly ratified, and, the ratifications thereof having been duly exchanged, was published and proclaimed by the President of the United States on the 29th day of June, 1876, which convention extended until the 20th day of November, 1876, the time allowed to said umpire for the decision of cases referred to him. (19 U. S. Statutes at Large, 642.)

IV.

That the said commissioners and umpires made money awards on 186 claims presented by your orator against the said Republic of Mexico, which said awards aggregated in amount $4,125,622.20, and money awards on 167 claims presented by the said Republic of Mexico against your orator, which said awards aggregated in amount $150,498.41; and that the difference between said amounts, after deducting the proper proportion of the expenses of said commission as provided in said first-named convention, was duly paid by said Republic of Mexico to the Secretary of State of your orator, in annual installments, commencing January 31, 1877, as provided by the several conventions aforesaid.

V.

That on the 17th day of March, 1870, the defendant La Abra Silver Mining Company, by its attorneys, Robert Rose and Frederick P. Stanton, first gave notice to your orator of the existence of a certain claim of the said defendant company against the said Republic of Mexico, which said notice was in the words and figures following to-wit:

Hon. HAMILTON FISH,
Secretary of State, Washington City:

The La Abra Mining Company, incorporated under the laws of the State of New York, having its present office in the city of New York, claims from Mexico the amount of one million nine hundred and thirty thousand dollars, for damages and losses suffered by it in consequence of the violence and outrages committed by the authorities of Mexico in 1867 & 8.

The said company therefore asks for the interposition of the Government of the United States with Mexico for the payment of said demand, and requests that its claim and proofs, hereafter to be produced, may be referred to the joint commission between the United States and Mexico for settlement.

Very respectfully,

ROSE & STANTON,
Counsel for Claimants.

Said notice was referred to said commissioners by the Secretary of State of your orator, and thereafter, on the 14th day of June, 1870, the said defendant company caused to be exhibited to, and filed with,

the said commissioners a memorial of said claim, which memorial was in the words and figures following, to-wit:

[Docket No. 489.]

MEMORIAL OF LA ABRA SILVER MINING COMPANY.

To the American and Mexican Joint Commission:

The memorial of "La Abra Silver Mining Company" respectfully represents:

That your memorialist is a corporation, formed November 18th, 1865, under and by virtue of the provisions of the act of the legislature of the State of New York of the United States of America, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes," passed February 17th, 1848, chartered for the "purchase of mines and mining, melting, dressing, smelting, buying, and selling argentiferous and other ores, minerals, and metals." That the corporate name of your memorialist is "La Abra Silver Mining Company;" that the shareholders of La Abra Silver Mining Company were, at the time of its said formation, thence, hitherto, and now are citizens of the United States of America; that the principal office of said company has hitherto been, and now is in the city of New York, in the State of New York aforesaid; that the amount of the stock of said company was $300,000, and the existence of said company was limited to fifty years. That it was provided in the charter of said company, among other things, as follows:

"Said company is formed for the purpose of carrying on a part of its business in places out of the State of New York, which places are Tayoltita, in the State of Durango, and, also, the mineral district of San Dimas, both in Mexico."

That shortly after the date of their said charter, the said company purchased and became the owners and proprietors of certain mines and haciendas of great value in Mexico, to wit, the mines Rosario, La Luz, El Christo, Los Innocentes, 550 feet of the mine Nuestra Señora de Guadalupe, 22 equal, undivided 24th parts of the mine La Abra, and the haciendas St. Nicholas and Guadalupe, and the water power appertaining thereto, all situated at Tayoltita, in the State of Durango, and the mines La Arrayon, El Lous, and La Talpa, situated in La Talpa Mountain, in the State of Sinaloa, and the following mines were denounced by the then superintendent of the company for the company, to wit, Sol Felipe, San Antonio, and Bartholow, all situated at Tayoltita aforesaid; the said mines situated at Tayoltita were usually known by the general name of "La Abra mines;" that said mines were of extraordinary richness; so much so that they had become of historical interest, being especially mentioned for the abundance and richness of their ores by Baron Humboldt and Mr. Ward in their respective works.

That after becoming the proprietors of said mines, the said company, with all possible dispatch, proceeded to the working of said mines; to that end they sent intelligent agents to Mexico, employed large numbers of miners, machinists, and laborers, purchased great numbers of mules and their equipments, large quantities of provisions, a large quantity of the best and most improved machinery, which they transported on the backs of mules to the mines, at heavy cost, and incurred other expenses necessary to the most extensive and successful working of said mines; that they expended, in the purchase of said mines and their working, the sum of $303,000; that as the result of this large expenditure, they were getting out of said mines a large amount of the richest ore, and were in the act of realizing the extraordinary profit of a million dollars per annum, when they were compelled to abandon their said mines and all their machinery and other property and over a thousand tons of ore obtained by the company from their said mines, by reason of unfriendly and illegal acts of the Mexican officials. An intense prejudice was constantly manifested by the authorities, both civil and military, and by the Mexican populace, against all Americans, and especially against those engaged in mining, including said company. This prejudice was intensified by the belief that the Government of the United States intended to annex Durango, Sinaloa, and other States to their territory; and it was generally reported and believed that "La Abra Company" was assisting in this purpose. The property of the company and the persons and the lives of the employees were threatened by the authorities and the people. The company's superintendent was arrested, without having given any cause for offense, and fined and imprisoned without trial, and without being informed of any offense. When the superintendent applied to the authorities, both civil and military, in Durango and Sinaloa, for protection, his request was harshly refused. Acts of violence were committed against the property and employees of the company, which were encouraged by the authorities. The employees of the company became so alarmed that it was impossible to keep them at work. The authorities repeatedly seized mule trains of the company loaded with provisions and appropriated the same to their use. Large quantities of ore, taken out of the mines, were taken from the company, the employees of the company being deterred by threats from resisting

such spoliation. Things finally got to such a pass that one of the personnel of the company, in charge of one its trains, was openly killed by the Liberal forces, and the train seized, and that was made matter of boast by Mexican officials, and the authorities at San Dimas openly avowed their purpose to drive out all American mining companies and get their property. Your memorialist charges that one motive of this persecution was to compel the company to leave, and thus permit the Mexicans to obtain possession of their valuable property. From the said persecutions, outrages, and insecurity, it became impossible for the company to work the said mines, and the same were abandoned as aforesaid. That said enforced abandonment of said mines utterly ruined said company, who sustained damages to the amount of $3,000,030, as will appear by the following consideration:

When said company acquired said Abra mines, though said mines were of immense richness, it was impossible from their neglected state, to extract ores except by heavy expenditures. That in connection with said principal Abra mines, were buildings of great cost and other permanent structures, but owing to the abandoned condition of said mines they were of no present value; that the large expenditures made by the said company at said mines gave a very great value to said mines and buildings and other permanent structures. That said mines, with said buildings and other permanent structures, became and were of great value, to wit, of the value of $1,000,000. That at the time of the abandonment of said mines the company were obliged to abandon one thousand tons of silver ore already extracted, worth $500,000, which it was impossible for them to bring away from the mines, and which, upon the abandonment of said mines by the company, were carried off by the Mexicans and they were lost to the company.

That at the time of the abandonment of said mines by the company, the company were extracting large quantities of ore, and their profits would have been very great if they had been permitted to work said mines; that the company estimate their clear annual profits which they could have obtained from said mines at $1,000,000 per annum. That in addition to the expenditures in said mines, as aforesaid, said company have expended $30,000 in conducting their business otherwise than in the expenditures at said mines.

That said mines and the improvements and machinery therein have become wholly lost to said company. And in consideration of the premises, the company say that their losses and damages, in the premises, because of their enforced abandonment of said mines, is in the whole $3,000,030.

That the claimant is now a corporation of the United States of America, and its stockholders are all citizens of said United States, and it was such corporation when this claim arose. That the principal office of said company when this claim arose, and thence, hitherto, and now is, in the city of New York aforesaid. That neither said company or any of its stockholders were subjects of Mexico, or had they or any of them, ever taken any oath of allegiance thereto.

The entire amount of the claim does now and did when it had its origin, belong solely and absolutely to the claimant, the said company, and no other person has any interest therein.

That the company has never received any indemnity for said claim, nor any person for them.

That the claim was not presented prior to February 1, 1869, to the Department of State of either Government or to the minister of the United States at Mexico.

Wherefore, in consideration of the premises, your memorialist prays for an award against the Government of Mexico for their said damages and interest thereon.

That said company and its officers and shareholders are absent from and beyond the District of Columbia.

LA ABRA SILVER MINING COMPANY.
By their attorney in fact, ROBERT ROSE.

FREDERICK STANTON,
ROBERT ROSE,
W. W. BOYCE,
Counsel.

DISTRICT OF COLUMBIA, *Washington County, ss:*

Before me, Randolph Coyle, U. S. commissioner, personally appeared the above-named Robert Rose, attorney in fact of the memorialist, who, being duly sworn, says, on oath, that the matters of fact set forth in said memorial are true so far as they are stated from his own knowledge, and, so far as they are stated upon information derived from others, he believes the same to be true, and that the said claimant is now absent from the District of Columbia.

ROBERT ROSE.

Sworn to and subscribed before me this 14th day of June, 1870. Witness my hand and official seal the day and year aforesaid.

[SEAL.]

RANDOLPH COYLE,
U. S. Comm'r.

VI.

That, in support of said claim, the said defendant La Abra Silver Mining Company, by the said Rose and Stanton and Boyce, attorneys, through the Department of State of your orator and through the said Ashton, agent for your orator, at various times caused to be exhibited to and filed with said commissioners *ex parte* affidavits and certificates procured by said defendant company, and that the said Republic of Mexico at various times exhibited and filed certain proofs in reply thereto, and all the evidence which said Republic of Mexico could, by the use of the utmost diligence, obtain within the time allowed by the rules adopted by said commissioners for obtaining proof in defense against said claim; said proofs in support of and in defense against said claim were partly in the English and partly in the Spanish language; copies of such portions thereof as were in English, and translations of such portions thereof as were in Spanish, were printed by said defendant company for the use of said commission, save and except only the evidences of title of said defendant company to the said mines, of which evidences only an abstract was so printed; and a copy of said abstract of title, as printed as aforesaid by said defendant company, and copies of said proofs in support of and in defense against said claim are hereunto appended, and marked Exhibit A, and your orator prays that the same may be taken and considered as a part of this bill, with the same effect as though the same were herein set out in full.

VII.

That such proceedings in relation to said claim were had; that the same was heard by the said commissioners on the memorial and evidence aforesaid on or about the 19th day of May, 1875; that after hearing and considering said claim said commissioners differed in opinion as to the allowance thereof, the said Commissioner Zamacona delivering his opinion that said claim should be rejected altogether on the ground that the evidence in support thereof was insufficient, false, and in part procured by fraud, and that it was outweighed by the defensive evidence, and the said Commissioner Wadsworth delivering his opinion in the words and figures following, to wit:

The company in my opinion is entitled to indemnity for the seizures of its money, supplies, mule trains, and other property by the Mexican armed forces, under command of their officers undoubtedly for the use of such troops, and for the destruction of the mining property and interests of the company by the various Mexican authorities, civil and military.

The amount of money seized and taken by force, according to the proof, as I read it, was altogether $2,978. The value of the several mule trains and supplies seized and appropriated for the public use I make, say, $75,000. The property and interests destroyed in addition, by the arbitrary, lawless, and malicious acts of the authorities, amounted to a large sum, difficult to estimate, but equal in my judgment to the total investment made by the company less the aggregate of the money, teams, and supplies taken as above stated.

Upon these sums the claimant should have interest in lieu of prospective profits.

The profits of mining in Mexico during civil war (that is at all times nearly) and under the extraordinary circumstances surrounding claimant are more than doubtful. But I do not consider prospective profits even a part of the measure of damages in such cases. They are at best speculative, while interest is a definite and moderate allowance that may, with great propriety, take their place.

It is, however, idle for me to go into this important case with any particularity, since it must go to the umpire to be disposed of by him according to his views alone.

And thereupon said claim was referred to the said Thornton, umpire, for his decision upon the points of disagreement between said commissioners.

VIII.

That thereafter, on the 27th day of December, 1875, the said umpire, Thornton, decided that the said Republic of Mexico should pay, on account of said claim, the sum of $358,791.0 , for the pretended expenditures of said defendant La Abra Silver Mining Company, with interest on said sum; and the further sum of $100,000 for the value of the unreduced ores alleged to have been extracted from said mines and abandoned by said defendant company, with interest on said last-named sum; and said umpire delivered his opinion in the words and figures following, to-wit:

LA ABRA MINING COMPANY vs. MEXICO, No. 489.

AWARD OF THE UMPIRE.

With reference to the case of "La Abra Silver Mining Company *vs.* Mexico," No. 489, the umpire is fully satisfied and can not doubt that the company is entitled to be considered a corporation, or company of citizens of the United States, in accordance with the terms of the convention of July 4, 1868, having been duly chartered in conformity with the laws of the State of New York.

He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful, or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring their capital into it and raising up industrial establishments of all kinds. With this view it issued proclamations encouraging the immigration of foreigners, and promising them certain advantages and full protection. It can not be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were situated did not fulfill the engagements entered into by their Government, but, on the contrary, behaved toward them in an unfriendly and hostile manner. The ground of their claim is that these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works and to leave the Republic.

The evidence on the part of the claimants is, in the umpire's opinion, of great weight; the witnesses are, for the most part, highly respectable and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted or even weakened by the evidence submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities and, finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that, when so determined a spirit of hostility on the part of the local authorities (one of whom was the jefe politico, who

wielded great power) and so much indifference by the State government were displayed toward the claimants, it would have been of any avail to appeal to the courts of justice, would be puerile. In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

The umpire is of opinion that the Mexican Government, which, with a spirit of liberality which does it honor, encouraged all foreigners to bring their capital into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities. What the amount of this compensation should be it is very difficult to decide. The umpire is of opinion that the claimants should be reimbursed the amount of their expenditures and also the value of the ores extracted which they were forced to abandon, with interest upon both these sums. He can not consent to make any award on account of prospective gains nor on account of the so-called value of the mines. Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come to an end either from the exhaustion of the veins or from flooding or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested; they may be greater or less or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business and upon the amount of the ores reduced and of those extracted and deposited at the reduction works is a further compensation which, in the opinion of the umpire, that Government ought to to pay.

The evidence of George C. Collins, with regard to the amount invested, is clear and straightforward. He states it to be—

From subscriptions and sales of stock	$235,000.00
Lent and advanced	64,291.06
Due for rent, expenses, salaries, law expenses	42,500.00
	341,791.06

Any so-called "forced loans" and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants of the country. The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations can not proceed. To the above-mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores.

The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well regulated a business as the umpire believes that it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction. The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore must necessarily be vague and uncertain, and that of its average value still more so. Still, the umpire is strongly of opinion that the claiments are entitled to an award upon this portion of the claim.

He will put it at $100,000. It is possible that it is much less than the real value of the ores, but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award. Neither should interest be allowed on this amount so soon as on the others,

for the reduction of the ores would have taken time—say a year. It is not shown that the company had received any dividends before the period of the forced abandonment of the mines, about March 20, 1868. Neither ought interest to be awarded before that date.

The umpire therefore awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents ($358,791.06), with an annual interest of six per cent from March 20, 1868, to the date of the final award; and further, the sum of one hundred thousand Mexican gold dollars ($100,000), with the same interest from March 20, 1869, to the said date of the final award.

EDW. THORNTON.

WASHINGTON, *December 27, 1875.*

IX.

That thereafter, on the 29th day of January, 1876, and the 19th day of September, 1876, the said Avila, agent for the Republic of Mexico, filed with the said umpire motions for a rehearing of the said claim, on the grounds set forth in the opinion of the said Zamacona, commissioner, as aforesaid, and on the further ground that the said allowance of $100,000 and interest for the value of said unreduced ores was invalid, because no allowance for the said ores had been made by the said Wadsworth, commissioner, and the question of such allowance had not been referred to the said umpire. But the said umpire, on the 20th day of October, 1876, denied said motions for rehearing, and on the 20th day of November, 1876, the functions of the said umpire terminated, as provided by the convention of April 29, 1876, aforesaid. By a decision of the said umpire, dated July 31, 1876, the said date of July 31, 1876, was fixed as the date to which interest on all claims was to be computed, wherefore the award on the claim of the said defendant company, including interest, amounted to $683,041.32.

X.

Your orator further shows that the gist and *gravamen* of the claim of said defendant La Abra Silver Mining Company, as set forth in its memorial and the affidavits in support thereof, was that the said defendant company was compelled, by threats and illegal and unfriendly acts of the military forces of the said Republic of Mexico, and of the local and municipal officials and people in the district of San Dimas, in the State of Durango, in said Republic, where the said mines were situated, extending from January, 1866, to March, 1868, to abandon said mines, and that said defendant company did, by its superintendent, Charles H. Exall, abandon said mines on or about the 20th day of March, 1868, in consequence of such threats and illegal and unfriendly acts; that the said illegal and unfriendly acts, as charged in said memorial and affidavits, comprised the levying of *prestamos*, or forced loans, upon said company, seizure of its mule trains, robbery of its agents, murder of its employés, assaults upon its hacienda, theft of its ores, interference with the working of its mines, and imprisonment of its superintendent, the said Exall; but the said defendant company, fraudulently intending to deceive your orator and the said commissioners and umpire, and to prevent the said Republic of Mexico from showing the falsity of said claim, purposely suppressed and abstained from presenting in its proofs any books or reports relating to such alleged threats, or illegal and unfriendly acts, or to its ex-

penditures, or the value of its property, although it alleged that the said illegal and unfriendly acts were reported to the stockholders at New York when the same were committed; and the only documentary proofs produced by said defendant company and filed in support of said claim, save and except the evidences of title to its said mines, consisted of five letters dated in July, 1866, and June and July, 1867, which letters one James Granger, formerly clerk of said company at its said mines, delivered to the attorney for said defendant company in the year 1870, and identified in his affidavit made in behalf of said defendant company before the commercial agent of your orator at Mazatlan, on the 14th day of May, 1870. Said letters were marked V, W, X, Y, and Z, and appear at marginal pages 52, 53, and 54 of the exhibit to this bill marked A.

XI.

Your orator further shows that in the month of June, 1877, the Government of the said Republic of Mexico procured from J. F. Gamboa an affidavit stating that the affidavit made by him on behalf of the claim of said defendant La Abra Silver Mining Company in May, 1870, and filed in support of said claim before said commission, was false, and that he had been paid $100 by Alonzo W. Adams, agent of said defendant company, for making said affidavit of May, 1870, and also stating that John Cryder and J. M. Loaiza had each been paid money by said Adams for making affidavits in support of the claim of said defendant company in the said month of May, 1870; and the said Republic of Mexico, in the said month of June, 1877, procured from the said J. M. Loaiza an affidavit stating that the affidavit made by him in May, 1870, in support of said claim, was false, and that the same had been made when affiant was intoxicated and under the persuasion of the said Adams, and that the said Adams had paid money to said affiant for making his said affidavit of May, 1870; and on the 9th of August, 1877, the Government of the Republic of Mexico procured from Frederick Sundell an affidavit stating that he had been, from the year 1865 to the end of 1868, assayer at the mines of the Durango Mining Company, located a few miles from those of the said defendant company, that the relations between the officers of the said defendant company and the Mexican authorities had always been friendly, that affiant had never heard of any acts of hostility on the part of said authorities toward the said defendant company or its officers, and that affiant must have heard of such acts if they had been committed, that said Exall was not driven from said mines in March, 1868, but had for some months before that time expressed his intention of leaving said mines and returning to New York, that the ores mined by said defendant company were very poor in quality and had remained undisturbed since 1868, and that, although some of the mines of said defendant company had been denounced and worked by others after their abandonment by said defendant company, such working had been abandoned, and that all of said mines save one, then recently denounced, were then, in August, 1877, unworked and subject to denouncement under Mexican law.

In the month of August, 1877, the Government of the said Republic of Mexico first learned, through its representative at Washington, that the said Granger had in his possession the press-copy book of said defendant company containing press copies of the reports and letters of its various superintendents and agents at the mines from January, 1866, to August, 1868; also certain original letters from D. J. Garth, the

treasurer of said company, in New York, to its superintendents at the mines; also an original letter written to the said Granger from Tayoltita, on the 26th day of February, 1868, by the said Superintendent Exall, placing the said Granger in charge of the said mines; also letters written to the said Granger by the said Exall after leaving said mines, and dated Mazatlan, March 15, 1868; San Francisco, April 7, 1868; New York, May 8, 1868; New York, June 15, 1868, and Richmond, July 18, 1868, which letters and reports showed that the said defendant company held control of its said mines until August, 1868, and then abandoned the same for lack of means to work them, and because such working was unprofitable, and not because of any illegal and unfriendly acts on the part of Mexican authorities and people, and that said claim of the said defendant company was false and fraudulent, and that all the material testimony in support of said claim was untrue; and said Republic of Mexico, through its officers in the states of Durango and Sinoloa, and with the utmost possible diligence, procured from the said Granger the said press-copy book and the said original letters, and forwarded the same, together with the affidavits so as aforesaid in the said months of June, 1877, and August, 1877, procured, to its representative at Washington, which representative, on the 21st day of January, 1878, advised the Secretary of State of your orator, William M. Evarts, of the existence in the Mexican legation at Washington of proofs of fraud in the said claim of the said defendant company.

XII.

Your orator further shows that on the 18th day of June, 1878, an act of the Congress of your orator was approved, directing the distribution of the moneys then received and thereafter to be received in payment of the awards made by the said commission on claims presented by your orator, except as in said act provided. Said act requested the President of your orator to investigate any charges of fraud presented by the Mexican Government with respect to the claim of the said defendant La Abra Silver Mining Company, and provided that if the President should be of opinion that the honor of the United States, the principles of public law, or considerations of justice and equity required that the award in the case of the said defendant company should be opened and the case retried, it should be lawful to withhold payment of said award until such case should be retried and decided in such manner as the Governments of the United States and Mexico might agree, or until Congress should otherwise direct. Thereafter the said Republic of Mexico first learned of the whereabouts of Julius A. de Lagnel, who had been superintendent of said defendant company's mines from about May, 1866, to about May, 1867, and whose testimony said defendant company had purposely refrained from securing and offering on the trial of its said claim, although the whereabouts of the said de Lagnel were well known to said defendant company, and his testimony might have been easily procured, if the said defendant company had desired to procure the same. On the 2d day of December, 1878, the said Republic of Mexico, through its consul at San Francisco, California, procured from the said de Lagnel his affidavit identifying as genuine the said press copy book of the said defendant company, and the said letters from the said Garth, treasurer of the said defendant company, and thereafter the representative of the said Republic of Mexico at Washington, laid before the said Evarts, Secretary of State

of your orator, the said press copy book and the letters and affidavits hereinbefore in the XIth paragraph of this bill mentioned.

Thereafter, on the 8th day of August, 1879, the said Secretary of State of your orator, William M. Evarts, having investigated the charges and evidences of fraud in said claim which were presented to your orator by said Republic of Mexico, as aforesaid, reported to the President of your orator his opinion that the said evidences brought into grave doubt the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the said defendant company, and that the honor of the United States did require that said case should be further investigated by your orator to ascertain whether your orator had been the means of enforcing upon a friendly power claims of citizens of your orator based upon or exaggerated by fraud; and said Evarts further reported as follows:

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point.

Said opinion was approved and adopted by the President of your orator, Rutherford B. Hayes, and thereafter, on the 3d day of September, 1879, the said Evarts further reported to the President of your orator as follows:

The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the commission to which, under the provision of the convention, it was presented by this Government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right, which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

Said further opinion was approved and adopted by the President of your orator, and thereafter certain moneys then in possession of your orator on account of the first, second, and third installments of the award on the claim of the said defendant company, to the amount of $138,565.52, were, by the said Evarts, paid to representatives of the said defendant company in respect of said award, as follows:

On September 17, 1879, to Sumner Stow Ely	$132,965.52
On December 6, 1879, to Henry C. Hepburn	2,909.94
On January 20, 1880, to Sumner Stow Ely	2,690.06

Thereafter, on the 15th day of April, 1880, the said opinions of the said Evarts were, by the President of your orator, transmitted to the Senate of your orator and, the Congress of your orator having, on the

16th day of June, 1880, adjourned without providing for the investigation so recommended by the said Evarts, further payments from the moneys received by your orator on account of the said award, aggregating $95,083.39, were made by the said Evarts, as follows:

From the third installment, on February 14, 1881—	
To Charles T. Parry and Joseph Hopkinson	$1,257.20
And to Sumner Stow Ely	3,142.80
From the fourth installment, on August 16, 1880—	
To Sumner Stow Ely	32,706.64
And to George H. Williams	1,152.13
And on January 26, 1881—	
To Frederick P. Stanton	3,333.34
To Miller & Lewis, for T. W. Bartley	3,333.33
To W. W. Boyce	3,333.33
And to Shellabarger & Wilson	5,000.00
From the fifth installment, on March 5, 1881—	
To Sumner Stow Ely	34,545.85
To Thomas W. Bartley	666.66
To Frederick P. Stanton	666.66
To W. W. Boyce	936.94
To Shellabarger & Wilson	2,633.00
To Charles T. Parry and Joseph Hopkinson	314.28
To George H. Williams	1,152.13
And to Cyrus C. Camp	909.10

Thereafter, on November 25, 1881, the Secretary of State of your orator, James G. Blaine, made the following payments from the moneys received by your orator on account of the fifth installment of the award on the claim of said defendant company, to wit:

To Sumner Stow Ely	$2,034.15
To Thomas W. Bartley	2,500.00
To Frederick P. Stanton	2,500.00

No further payment of moneys received by your orator on account of said award on the claim of said defendant company has been made to any person, and there remains in the possession of your orator on account of said award the sum of $403,030.08.

XIII.

Your orator further shows that by resolution of August 30, 1888, the Senate of your orator directed its Committee on Foreign Relations to take testimony of witnesses under oath respecting the claim of said defendant La Abra Silver Mining Company; that the press-copy book and letters in the eleventh paragraph of this bill, mentioned, were laid before said committee; that numerous witnesses, for and against said claim, were examined under oath before said committee, and cross-examined by counsel for said defendant company and for the said Republic of Mexico, respectively; and the said committee, on the 1st day of March, 1889, reported to the Senate of your orator, among other things, that—

> The main allegation in the petition of La Abra Company presented to the mixed commission, to wit: that the company was dispossessed of its property by the forcible interference of the Mexican authorities, is disproved and shown to have been wholly false, and this mainly by the correspondence of the company's own officers and agents; and it appears by the testimony taken by the committee that the abandonment of the property and the failure of the company were wholly due to the poverty of the mines and the consequent financial embarrassment of the company.

And said committee reported that it was the duty of your orator to bring suit in the judicial courts against the claimants to the moneys

in the possession of your orator arising from said award to have the facts relating to said claim and award judicially determined, and if it should be found that the said award was obtained by fraud and false swearing, to return said moneys to the Republic of Mexico.

XIV.

Your orator further shows that on the 28th day of December, 1892, the President of your orator approved a bill which had then passed both Houses of the Congress of your orator, and which, by such approval, became a law, which law directed the Attorney-General of your orator to bring a suit or suits in this honorable court, in the name of your orator, against the said defendant La Abra Silver Mining Company, its successors and assigns, to determine whether the award made as aforesaid in respect of the claim of the said defendant company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant company, or its agents, attorneys, or assigns; and in case it be so determined to bar and foreclose all claim in law or in equity on the part of said defendant company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award. And said law conferred full jurisdiction upon this honorable court to hear and determine such suit, and to make all interlocutory and final decrees therein and to enforce the same by injunction or any proper final process.

XV.

Your orator further shows that, in fact, the said defendant La Abra Silver Mining Company was not compelled by threats or acts of Mexican officials or people to abandon its said mines as stated in said memorial and in the proofs submitted by said defendant company in support of its said claim, on or about the 20th day of March, 1868, or at any other time, but that said claim was a sheer fabrication and every material allegation in said memorial contained was a falsehood, and that all the material testimony upon which said claim was allowed and said award was made was false, and known to be so by all the witnesses giving and swearing to the same, and by the said defendant company, when it caused the same to be exhibited as true to said commissioners, and that the whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns.

XVI.

Your orator further shows that your orator has obtained from the said Republic of Mexico the press-copy book, affidavits, letters, and documentary evidence hereinbefore, in the XIth paragraph of this bill, referred to. Copies of the contents of the said press-copy book and of said affidavits, letters and documentary evidence have been printed under authority of the Congress of your orator, and as so printed are filed herewith and marked Exhibit B, and your orator asks that they may be taken and considered to be a part of this bill.

And your orator says that the said Julius A. de Lagnel can and will, under oath, testify to the genuineness of the said press-copy book and of the letters of the said D. J. Garth, and to other important and material facts respecting the claim of said defendant La Abra Silver Mining Company; and that William P. Tuttle can and will testify to the genuineness of the said letters of the said Charles H. Exall; and that Charles B. Dahlgren, J. F. Gamboa, and J. M. Loaiza can and will testify that the affidavits purporting to have been made by them in support of said claim were false and were obtained by fraudulent practices; and that Frederick Sundell, A. B. Elder, Ramon Hermosillo, Eugenio Somero, and Francisco Torres can and will testify that the material allegations of the said memorial and the material testimony submitted by said defendant company in support of said claim are false. And your orator says that the said documentary evidence and the said witnesses will enable your orator conclusively to show the facts in the XVth paragraph of this bill alleged, and also the following, which your orator says are the facts, to wit:

That there was no hostility toward said defendant La Abra Silver Mining Company on the part of Mexican officials or people, but that, on the contrary, their relations to its officers were friendly. That "prorogas," or extensions of title, were frequently granted to said company, and that said company received from officers of the Republican army special military protection for its property and for the mule trains belonging to contractors with said company during the war between the Republican Government of Mexico and the Imperialists. That no onerous taxes were enforced and that but one loan and that of a general character was levied upon the company, which company refused payment with impunity, under the plea of lack of means. That no mule trains were ever taken from the company, and that it never owned any. That its employé was murdered by another of its employés, who was promptly tried, convicted, and shot by the military authorities. That no assault was made upon its buildings. That in only one instance did the company lose anything by robbery, and that said robbery was committed on the highway by armed bandits, and that the military authorities made every effort to find and punish the offenders. That the difficulty with the local authorities in June and July, 1867 (styled by the superintendent, in a letter to the treasurer, "a little spat with the officials, which was gotten through without much trouble"), was due to the cause stated by the witnesses for the defense, to wit, that the superintendent had, as expr ssed by him in the letter above referred to, "reduced the cash payment from one-third," and that the said difficulty occasioned no inconvenience to the company.

That the superintendent was not imprisoned, but only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint was imposed upon him. That no redress was denied the officers of the company, and no wrongs were inflicted upon them. That the officers of the company paraded their rights as American citizens, and Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty. That when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the lat-

ter replied, on the 6th of October, 1867: "There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent."

That as early as May, 1867, the said Garth, treasurer of said company, advised Superintendent Exall, at the mines, that no more money could be sent him by said company; that a draft on said company for $5,000, drawn by Superintendent De Lagnel through the Bank of California, had been protested; and that the said Exall must pay all expenses from the proceeds of the mines. And in July, 1867, the said Garth wrote the said Exall, "if it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned."

That the ores extracted from the said mines were worthless, the only reduction made being of 90 tons in August, 1867, and yielding less than $5 per ton, which was not enough to pay the cost of mining, and the rest being so poor that, according to Exall's report of October 6, 1867, it would not "pay to throw it in the river." That for this reason, if for no other, they were not carried off by Mexicans, and are still at the mines. That as early as July, 1867, the company was in debt at Tayoltita over $3,000, exclusive of the $5,000 draft above mentioned, upon which suit was afterwards brought by the Bank of California. That in July, 1867, judgment by default was entered against the company in New York for over $50,000 in favor of J. H. Garth (a stockholder in but not a witness for the company) on certain notes of the company. That then all supplies from New York being cut off by the company, the superintendent was obliged, in order to keep up the semblance of operating the mines, to employ four Mexican miners (of whom he says, in his report to the treasurer, "We can do better with them when they are a little hungry"), on a promise to pay them in goods, at a heavy profit, one-half the value of the ore they might get out.

That said Superintendent Exall, on the 24th day of January, 1868, wrote the said Treasurer Garth: "If by next steamer I receive no assistance from you I intend leaving for the East," and that the said Exall expressed such intention to the said Sundell and to other persons for months before leaving said mines. That the said Exall, on the 26th day of February, 1868, placed the said James Granger in charge of the mines and property of said defendant company, and left said mines in said month of February, and not, as sworn to by him in his affidavit in support of said claim, on or about the 20th day of March, 1868, and proceeded to New York, via Mazatlan and San Francisco, for the purpose of collecting unpaid salary due him, the said Exall, and of inquiring into the intentions of said defendant company. That the said Exall continued to instruct the said Granger by letters from Mazatlan, San Francisco, New York, and Richmond, down to July 18, 1868, to keep the books and property of the company secure, but to find out quietly how he could dispose of the remaining property; and that on the 8th day of May, 1868, said Exall authorized said Granger to extend and renew the agreement entered into by the said Exall on the 7th day of February, 1868 (which agreement was produced by said Republic of Mexico in its defensive evidence before said commission, and appears at marginal pages 166 and 167 of the exhibit to this bill marked A), with Judge Guadalupe Soto, one of the Mexican officials afterwards alleged by said Exall and other witnesses, in their affidavits in support of said claim, to have driven said Exall from the said mines, and to have compelled the abandonment of the same by the said defendant company.

That the said Exall, failing to collect his unpaid salary, brought suit against said defendant company for the same, and at the same time endeavored to form a new company to take charge of said mines, to assume the indebtedness of the said defendant company to him, the said Exall, and the said Granger, and to send him, the said Exall, back to said mines as superintendent of the same. That the said Granger remained in charge of the said mines and property until after August 12, 1868, on which date he advised the Mexican collector of taxes that there were neither money nor effects to pay taxes on said mines, but that the superintendent would return in November, 1868, when the same would be paid. That the said Exall and the president of the said defendant company, George C. Collins, and the first superintendent of the said defendant company, Thomas J. Bartholow, grossly and fraudulently misstated and exaggerated, in their affidavits made in support of said claim, the amount of money expended by said defendant company in the purchase and operation of its mines and property, and that said defendant company expended in such purchase and operation much less than $200,000. That instead of paying gold for twenty-two twenty-fourths of La Abra mine, as was sworn by the said Bartholow, the said defendant company paid for such interest in La Abra mine in stock of the said defendant company, and that the remaining two-twenty-fourths interest in said La Abra mine belonged to a person who, although a claimant against Mexico before said commission, brought no claim on account of his said interest in said La Abra mine. That instead of purchasing 550 feet in said Nuestra Señora de Guadalupe mine, as sworn by the said Collins, the said defendant company purchased 550 shares of the stock of the Nuestra Señora de Guadalupe Mining Company, which company owned said last-named mine and made claim against Mexico before said commission, alleging that it had been forcibly compelled to abandon its said Nuestra Señora de Guadalupe mine, which said claim was dismissed by said commission, wherefore said defendant company, even if it had been entitled to recover on any portion of its said claim against Mexico, was not entitled to recover for its investment in the stock of said Nuestra Señora de Guadalupe Mining Company. That the investment of said company derived from reduction of its ores was only $420.09, instead of $17,000, as sworn by the said Exall and allowed by said umpire in his said award. That instead of the unreduced ores extracted by said defendant company and abandoned at its said mines being worth $100,000, as estimated by the said umpire, from conflicting statements of witnesses for said defendant company and allowed by the said umpire in his said award, said ores were absolutely worthless and would not pay the cost of reduction. That the affidavits of said J. F. Gamboa and said J. M. Loaiza so as aforesaid made in the month of May, 1870, and submitted to said commission by said defendant company were false and were procured by bribery and other unlawful means by the agent of said defendant company. And that the affidavit of the said Charles B. Dahlgren, as the same was submitted to said commission by said defendant company, was false and was not made by the said Dahlgren.

XVII.

Your orator further shows that on or about the 9th day of December, 1869, the said defendant, La Abra Silver Mining Company, entered into a contract with the said Alonzo W. Adams, under which contract the said Adams undertook and agreed to procure evidence in support

of, and to prosecute the said claim of, the said defendant company, for which services the said defendant company, in and by said contract, undertook and agreed to pay the expenses of the said Adams to the amount of $3,500 and to pay to the said Adams or his assigns one-third of the moneys which might be recovered on said claim; that on or about the 28th day of June, 1871, the said Alonzo W. Adams assigned to the said defendant, Sumner Stow Ely, an interest equal to one-fiftieth of the said Adams' interest in the said claim; that on or about the 19th day of December, 1874, the said defendant, La Abra Silver Mining Company, assigned to one Thomas H. Nelson an interest of one-twentieth in the said claim; that on or about the 28th day of December, 1875, the said Thomas H. Nelson assigned to the said defendant, Sumner Stow Ely, all of his interest in the said claim and award; that on or about the 10th day of May, 1876, the said Thomas W. Bartley assigned to the said Henry S. Foote an interest equal to one-half of the said Bartley's interest in the said award; that at some time to your orator unknown the said Henry S. Foote departed this life domiciled in the county of Davidson, State of Tennessee, testate, and that by his last will and testament, duly admitted to probate in the proper court of the said county, the said defendant, Henry S. Foote, was appointed executor of the said last will and testament; that on or about the 15th day of November, 1876, the said defendant, Sumner Stow Ely, assigned to the said Herman Camp an interest of $3,940 in the said award; that on or about the 28th day of July, 1879, the said defendant, La Abra Silver Mining Company, by its proper officers and under its corporate seal, made, executed, and delivered to the said defendant, Sumner Stow Ely, its power of attorney authorizing the said Ely to collect the said award, and giving and granting to the said Ely full power of substitution in the premises; that on or about the 4th day of October, 1879, the said Alonzo W. Adams assigned to the said defendants, Samuel Shellabarger and Jeremiah M. Wilson, an interest of $10,000 in the said award; that on or about the 9th day of October, 1879, the said Alonzo W. Adams and the said defendant, La Abra Silver Mining Company, assigned to the said defendant George H. Williams an interest of $16,000 in the said award; that at some time to your orator unknown the said Herman Camp departed this life domiciled in the county of Venango, in the State of Pennsylvania, testate, and that by his last will and testament, duly admitted to probate in the proper court of said county, the said defendant Cyrus C. Camp, was appointed executor of said last will and testament; that on or about the 6th day of May, 1880, the said defendant, La Abra Silver Mining Company, assigned to the said defendant, Cyrus C. Camp, executor of the last will and testament of Herman Camp, deceased, an interest of $10,000 in the said award; that on or about the 29th day of June, 1880, the said defendant, La Abra Silver Mining Company, assigned to the said defendant, Eugene Jones, an interest of $34,000 in the said award; that on or about the 1st day of July, 1880, the said defendant, La Abra Silver Mining Company, assigned to the said Alonzo W. Adams an interest of $145,757 23 in the said award; that on or about the 4th day of February, 1881, the said defendant, La Abra Silver Mining Company, assigned to the said defendants, Charles T. Parry and Joseph Hopkinson, an interest of $4,400 in said award; that on or about the 4th day of February, 1881, the said defendant, La Abra Silver Mining Company, assigned to the said defendants, Samuel Shellabarger and Jeremiah M. Wilson, an interest of $5,266 in the said award; that on or about the 5th day of February, 1881, the said defendant, La Abra Silver Mining Company,

assigned to the said William W. Boyce an interest of $8,666.66⅔ in the said award; that on or about the 5th day of February, 1881, said defendant, La Abra Silver Mining Company, assigned to the said Thomas W. Bartley an interest of $6,166.66⅔ in the said award; that on or about the 5th day of February, 1881, the said defendant, La Abra Silver Mining Company, assigned to the said defendant Frederick P. Stanton an interest of $6,166.66⅔ in the said award; that on or about the 23d day of November, 1881, the said defendant, La Abra Silver Mining Company, assigned to the said defendant Frederick P. Stanton an interest of $9,374.97 in the said award; that on or about the 23d day of November, 1881, the said defendant, La Abra Silver Mining Company, assigned to the said Thomas W. Bartley an interest of $9,374.97 in the said award; that on or about the 10th day of June, 1883, the said defendant, La Abra Silver Mining Company, assigned to the said defendant, John H. Rice, an interest of $3,857.15 in the said award; that on or about the 27th day of November, 1883, the said defendant, Cyrus C. Camp, as executor of the last will and testament of Herman Camp, deceased, assigned to the said defendant, Katie L. Hatch, an interest equal to one-sixth of said Camp's interest in the said award; that on or about the 27th day of November, 1883, the said defendant, Cyrus C. Camp, as executor of the last will and testament of Herman Camp, deceased, assigned to the said defendant, Edward M. Harrington, an interest equal to one-sixth of the said Camp's interest in the said award; that on or about the 1st day of February, 1884, the said defendant, La Abra Silver Mining Company, assigned to the said Alonzo W. Adams an interest of $30,000 in the said award; that on or about the 21th day of April, 1884, the said defendant La Abra Silver Mining Company assigned to the said defendant George Ticknor Curtis an interest of $850 in the said award; that on or about the 12th day of May, 1884, the said Alonzo W. Adams assigned to the said defendants Samuel Shellabarger and Jeremiah M. Wilson an interest of $5,000 in said award; that on or about the 14th day of May, 1884, the said defendant La Abra Silver Mining Company assigned to the said Samuel C. Pomeroy an interest of $20,000 in the said award; that on or about the 29th day of May, 1885, the said defendant La Abra Silver Mining Company assigned to the said defendant George Ticknor Curtis, an interest of $1,650 in the said award; that sometime in the year 1885 the said Thomas W. Bartley departed this life domiciled in the District of Columbia, testate, and that by proceedings duly had in the proper court of said District, the defendant, Edward S. Hamlin was appointed administrator with the will annexed of the estate which was of the said Thomas W. Bartley; that on or about the 20th day of May, 1886, the said Alonzo W. Adams assigned to the defendant Crammond Kennedy an interest of $2,500 in the said award; that at some time to your orator unknown the said Alonzo W. Adams departed this life domiciled in the county of Lorain, State of Ohio, testate, and that by his last will and testament duly admitted to probate in the proper court of said county the said defendant Daniel M. Adams was appointed executor of the said last will and testament; that on or about the 5th day of March, 1887, the said defendant La Abra Silver Mining Company assigned to said defendants, Samuel Shellabarger and Jeremiah M. Wilson, an interest of $3,333.34 in the said award; that on or about the 21st day of February, 1888, the said defendant Cyrus C. Camp assigned to the said defendant Sterling B. Toney an interest of $3,000 in the said award; that, at some time in the year 1890, the said William W. Boyce departed this life,

domiciled in the county of Fairfax, in the State of Virginia, testate and that by his last will and testament, duly admitted to probate in the proper court of said county, the said defendant John W. Burke was appointed exeeutor of said last will and testament; that on or about the 27th day of August, 1891, the said Samuel C. Pomeroy departed this life, domiciled in the District of Columbia, testate, and that by proceedings duly had in the proper court of the said District the said defendant the American Security and Trust Company was appointed administrator with the will annexed of the estate which was of the said Samuel C. Pomeroy; that on or about the 10th day of January, 1893, the said defendant Cyrus C. Camp, as executor of the last will and testament of Herman Camp, deceased, assigned to the said defendant Ellen V. Camp an interest equal to one-third of the interest of said Camp, executor, in the said award;

And that the said defendants, and each and every of them, claim some right to, or interest in, said award made on the claim of the said defendant company as aforesaid, and in the moneys now remaining in the possession of your orator on account of said award as aforesaid, either as hereinbefore in this paragraph set forth or otherwise, in their own right or in some representative capacity; and your orator prays discovery from each and every of the said defendants as to the nature, character, and amount of their respective claims as aforesaid, and whether they claim the same respectively in their own right, or in some, and what, representative capacity.

XVIII.

Your orator is informed and believes, and thereupon says, that persons other than the said defendants, and whose names are at present unknown to your orator, pretend to have some right or claim to, or interest in, said award on the claim of said defendant company and in the moneys so as aforesaid remaining in the possession of your orator. And your orator prays discovery from each and every of the said defendants as to whether any and what other person or persons than the said defendants claim any and what right to or interest in the said award or the said moneys; and whether such other persons, if any, make such claim in their own right, or in some, and what, representative capacity; and that such other persons, if any, when discovered, may be made parties defendant hereto, with apt and proper words to charge them respectively.

XIX.

Your orator further shows, that by reason of the premises a controversy has arisen between your orator and the defendants hereinbefore named, the said defendants claiming that it is the duty of your orator to pay over to them the sums by them, the said defendants, claimed respectively from the proceeds of said award now in the possession of your orator, and your orator claiming that it is the right and duty of your orator to have the facts relating to said claim and award inquired of by your honorable court, and if it shall be adjudged by your honorable court that the said award was obtained through fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant La Abra Silver Mining Company or

its agents, attorneys, or assigns, to return the proceeds of said award to the said Republic of Mexico; that the said defendants have made persistent demands upon the Department of State and upon the Congress of your orator for the payment to them of said moneys, and that some of the said defendants have brought suits in the courts of your orator to compel such payment, and that, unless restrained by the judgment and decree of this honorable court, the said defendants will continue to harass and annoy your orator with such demands and suits.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they and each of them, on oath, may full, true, direct, and perfect answer make to the matters and things aforesaid, and that as fully as if the same were here again repeated and they thereunto severally interrogated paragraph by paragraph.

And that the said defendants and each and every of them may be compelled to disclose as aforesaid.

And that the said defendants and each and every of them may, by the decree of this honorable court, be forever restrained and enjoined from setting up any claim to any part of said award or of the moneys now, as aforesaid, in possession of your orator.

And that the said award on the claim of the said defendant La Abra Silver Mining Company may, by the decree of this honorable court, be declared to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns.

And that your orator may have such other and further relief as the nature of your orator's case may require and as may be agreeable to equity and good conscience.

May it please your honors to grant unto your orator the most gracious writ of subpœna to be issued out of and under the seal of said court, to be directed to the said La Abra Silver Mining Company, George Ticknor Curtis, John H. Rice, Eugene Jones, Sumner Stow Ely, Cyrus C. Camp, executor of the last will and testament of Herman Camp, deceased, Ellen V. Camp, the American Security and Trust Company administrator with the will annexed of the estate which was of Samuel C. Pomeroy deceased, Edward S. Hamlin, administrator with the will annexed of the estate which was of Thomas W. Bartley deceased, Samuel Shellabarger, Jeremiah M. Wilson, Katie L. Hatch, Charles T. Parry, Joseph Hopkinson, Sterling B. Toney, Henry S. Foote executor of the last will and testament of Henry S. Foote deceased, Frederick P. Stanton, Daniel M. Adams executor of the last will and testament of Alonzo W. Adams, deceased, John W. Burke executor of the last will and testament of William W. Boyce, deceased; George H. Williams, Crammond Kennedy, and Edward M. Harrington, defendants, commanding them, and each of them, to be and appear before your honors in said court, on some day and under a certain penalty therein to be named, to answer the matters and things aforesaid, and to abide by such order and decree as your honors may make in the premises and as shall be agreeable to equity and good conscience; and your orator will ever pray.

LAWRENCE MAXWELL, JR.,
Acting Attorney General.

1893
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EXHIBIT A.

PROOFS EXHIBITED TO UNITED STATES AND MEXICAN MIXED COMMISSION IN SUPPORT OF AND IN DEFENSE AGAINST THE CLAIM OF LA ABRA SILVER MINING COMPANY AGAINST MEXICO.

CERTIFICATE OF INCORPORATION

OF

LA ABRA SILVER MINING COMPANY.

Doc. No. 6.

Know all men by these presents: That we, whose names are hereunto signed, desire to form a company under and pursuant to the provisions of the act of the Legislature of the State of New York entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February 17th, 1848, and of the several acts extending and amending said act, for the purpose of carrying on the kind of business hereinafter mentioned, and that to that end we do hereby certify as follows, to wit:

First: The corporate name of the said company shall be "La Abra Silver Mining Company."

Second: The objects for which the said company shall be formed are the purchase of mines and mining property, and the mining, melting, dressing, smelting, buying and selling argentiferous and other ores, minerals, and metals.

Third: The amount of the capital stock of the said company shall be three hundred thousand dollars.

Fourth: The term of the existence of the said company shall be fifty years.

Fifth: The number of shares of which said stock shall consist shall be three thousand.

Sixth: The number of trustees who shall manage the concerns of the said company for the first year shall be seven, and their names are: William L. Hearn, David J. Garth, Stephen F. Nuckolls, Weston F. Birch, Lewis Morris, Hiram P. Bennet, and Dabney C. Garth.

Seventh: Said company is formed for the purpose of carrying on a part of its business in places out of the State of New York, which places are Tayoltita, in the State of Durango, and also the mineral district of San Dimas, both in Mexico; and the name of the town and county in the State of New York in which the principal part of the business of said company within said State is to be transacted, is the city and county of New York.

In witness whereof, we have hereunto signed our names, this eighteenth day of November, in the year one thousand eight hundred and sixty-five.

DAVID J. GARTH.
STEPHEN F. NUCKOLLS.
HIRAM P. BENNET.

[U. S. Inter. Rev. 5 ct. stamp, canceled.]

STATE OF NEW YORK,
City and County of New York, ss:

On this eighteenth day of November, one thousand eight hundred and sixty-five, before me personally came and appeared David J. Garth, Stephen F. Nuckolls, and Hiram P. Bennet, to me known to be the individuals described in and who executed the foregoing certificate, and they severally before me made and signed the same, and acknowledged that they made and signed the said certificate for the purposes therein mentioned.

GRATZ NATHAN,
Notary Public, N. Y.

Endorsed: Filed November 21, 1865.

[U. S. Inter. Rev. 5 ct. stamp, canceled.]

STATE OF NEW YORK, *Office of the Secretary of State:*

I have compared the preceding with the original certificate of incorporation of La Abra Silver Mining Company, with acknowledgment thereto annexed, filed in this office on the twenty-first day of November, 1865, and hereby certify the same to be a correct transcript therefrom, and of the whole of said original.

Witness my hand and seal of office of the Secretary of State, at the city of Albany, this twenty-first day of November, one thousand eight hundred and sixty-five.

ERASTUS CLARK,
Deputy Secretary of State.

[Seal, Secretary's Office, State of New York.]

STATE OF NEW YORK, *City and County of New York, ss:*

I, William C. Conner, clerk of the said city and county, do certify that I have compared the preceding with the original certificate of incorporation of La Abra Silver Mining Company, on file in my office, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof, I have hereto subscribed my name and affixed my official seal, this 24th day of November, 1865.

[N. Y. SEAL.] WM. C. CONNER,
Clerk.

[U. S. Inter. Rev. 5 ct. stamp, canceled.]

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11 TITLES.

Translated abstract of the titles of the company to La Abra property, relating to the mines at Tayoltita and the haciendas of San Nicolas and Guadalupe, consisting of the original denouncements, and showing the transfers of the property down to the time the Abra Company became the purchaser.

Doc. No. 31.

This document is a notice to Juan Castillo de Valle, dated Durango, June 6, 1865, that upon his petition of the 40th of May, ult., that the mining board had, in view of the difficulties attending the working of the Arrayan, Cristo, Santos Ynocentes, and Abra mines, and in accordance with the 10th article of the 6th chapter, and the 14th article of the 9th chapter of the mining ordinances, granted him the exemption in favor of the said mines asked for in his petition.

(Sig'r) JOSE PALAO,
General Sec'y ad interim.

Here follows the certificate of the notaries public, Juan Rivas and Jesus Cinquenigui, that the foregoing signature of José Palao, the general secretary *ad interim* of the political prefectura of the department of Durango, is a true and genuine signature, and that the signer was the party he styled himself to have been.

Here follows the signature and certificate of the Governor, Florentino Carrillo, of the State of Durango, to the signatures of the notaries.

Here follows certificate of the United States consul at Mazatlan to Governor Carrillo's signature, &c.

[SEAL.]

Doc. No. 32.

Documents relating to the title of the hacienda or reducing works of Nuestra Señora de Guadalupe, at Tayoltita:

No. 1. This document, drawn at San Dimas, on the 8th of January, 1854, shows that Mariano Tajo transferred the hacienda of Guadalupe to José Ma. Valle, for the sum of three hundred and fifty dollars. This document is the title under which transfer is made by document.

No. 2. Which is a transfer of the same hacienda, made by Vicente Rubio and his wife, Benigna Valle de Rubio, on the 14th of December, 1863, to Vincente Melecos, of San Dimas, for the sum of two hundred dollars.

No. 3. Is a transfer of the same hacienda, made by Vicente Melecos, at San Dimas, State of Durango, on the 21st of December, 1863, to Miguel Laveaga, of the same place, for the sum of two hundred dollars.

No. 11. (This is the third paper.) Is a transfer of the same hacienda, made by Arcadia Laveaga, in the name of his father, Miguel Laveaga, at San Dimas, department of Durango, Mexico, on the 13th day of July, 1865, to Juan Castillo de Valle, before Martin Delgado, the local judge, for the sum of six hundred dollars.

12 Here follows certificate of the notaries public, Felipe Villareal, and Felipe Villareal Garcia, dated at the city of Durango, June 14, 1872, to the signature of Martin Delgado, before whom the last transfer of Laveaga to Valle was made. Also, separate certificates of the same notaries to the signatures of Vicente Melecos, who made the transfer to Laveaga, and also to the signature of Parqual Frias, and Carrila Contreras, who attested the bill of transfer.

Here follows certificate of General Florentino Carrillo, Governor of the State of Durango, to the signatures of the above notaries.

[SEAL.]

Here follows certificate of the United States consul at Mazatlan to the Governor's and his secretaries' signatures.

Doc. No. 33.

Title deed of the hacienda de Beneficio, (reducing works,) called San Nicholas, at Tayoltita, Durango, Mexico.

By these documents is shown that this hacienda, which was formerly known as the Carmen, was denounced by Juan Castillo de Valle and Ignacio Manjarrez, on the 16th of March, 1855. That after having repeated the usual formalities required by the mining ordinances, that final possession thereof was given to them by José de la Barcena, Governor and General Commandant of the State of Durango, on the 30th of April, 1857.

Here follows certificate of the notaries public, Jesus Meneses and P. Rueda Flores, dated Mazatlan, August 17, 1872, to the signatures of José de la Barcena, Governor of the State of Durango.

Here follows certificate of General Domingo Rubi, Governor and Military Commandant of the State of Sinaloa, to the signatures of the above notaries.

Here follows certificate of the United States consul at Mazatlan to the signatures of the Governor and that of his chief clerk.

Doc. No. 34.

Documents relating to the denouncement of the Arrayan mine.

These documents show that the Arrayan mine was denounced by Juan Castello de Valle and Ygnacio Manjarrez, at the mining town of Tayoltita, in the district of San Dimas, State of Durango, before the chief of the Department, on the 30th of December, 1861. That after the usual formalities prescribed by the ordinances of mining had been complied with, that final possession of the mine, according to law, was given on the 28th of February, 1862, by Jesus Vega, prefect of the district of San Ygnacio.

Here follows certificate of the notaries public, Jesus Meneses and Francisco Meneses, dated Mazatlan, August 12, 1872, that the foregoing signature of Jesus Vega is true and genuine, and that he was at the time in charge of the prefectura of the district of San Ygnacio, and of the mining branch.

Here follows certificate of Colonel José Ma. Rangel, Governor and Military Commandant of the State of Sinaloa, dated August 14, 1872, to the signatures of the above notaries.

Here follows certificate of the United States consul at Mazatlan to the signatures of José Maria Rangel, the Governor, and his chief clerk, Francisco Salida Rodriguez.

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13 Doc. No. 35.

Title deeds of the Nuestra Señora del Rosario Mine, situated at the mineral of Tayoltita, belonging to Messrs. Juan Castillo del Valle and Ygnacio Manjarrez.

These documents show that the mine of the Rosario was denounced by Juan Castillo de Valle, Ygnacio Manjarrez, and Candido Farin, on the 30th of December, 1854.

On the 11th of April, 1855, after having complied with the usual formalities required by the mining ordinances, Messrs. de Valle and Manjarrez asked for possession, in due form, of the mine, showing at the same time that Candido Farin, who had denounced with them, had disposed of his interest in the mine to them for fourteen hundred dollars. Hereupon, and on the 28th of April, 1855, final possession of the mine was given by the local judge, Ygnacio Quiroz Rivera, to de Valle and Manjarrez.

There is also appended a copy of an instrument executed by Farin to de Valle and Manjarrez, transferring his interest in the mine to them.

Here follows certificate of the notaries public, Felipe Villarreal and Jesus Cincunegui to the signatures of Martin A. Yrigoyen, Miguel de Laveaga, Juan Castillo de Valle, Francisco Acosta, and Ygnacio Manjarrez, whose names are appended to the foregoing documents, dated at the city of Durango, on the 14th of June, 1872.

Here follows certificate of General Florentino Carrillo, governor of the state of Durango, to the signatures of the above-named notaries.

Here follows certificate of the United States consul at Mazatlan to the signatures of the governor and his secretary.

Doc. No. 37.

Title deeds of the Cristo mine, situated at Tayoltita, department of Durango, Mexico.

By these documents is shown that final possession of this mine was given to Messrs. Juan Castillo de Valle and Ygnacio Manjarrez, by Luis Trijo, the gefe politico of the department of San Dimas, on the 4th of September, 1863, and that the present title deeds were issued to the said parties by José M. Patoni, the governor and military commandant of the State of Durango, on the 9th of September, 1863.

Here follows certificate of the notaries public, Jesus Meneses and P. Rueda Flores, dated Mazatlan, August 17, 1872, to the signature of Governor Patoni.

Here follows certificate of General Domingo Rubi, Governor of the State of Sinaloa, to the signatures of the above-named notaries.

Here follows certificate of the United States consul, at Mazatlan, to Governor Rubi's signature, and that of his secretary, Francisco Salido Rodriguez.

Doc. No. 38.

Title deed of possession of Santos Ynocentes mine.

These documents show that this mine was denounced by Juan Castillo de Valle, at the mining town of Tayoltita, on the 5th day of August, 1865; that after having completed the usual formalities required by the mining ordinances, that final
14 possession thereof was given to de Valle on the 24th of August, 1865, by the political prefect of the department of Durango, Buenaventura G. Saravia.

Here follows certificate of the notaries public, Juan Rivas and Jesus Cincunegui, dated at the city of Durango, on the 14th of June, 1872, to the signature of the prefect superior of the department of Durango, Buenaventura G. Saravia, and Bernado de la Torre, his Secretary.

Here follows certificate of General Florentino Carrillo, governor and military commandant of the state of Durango, to the signatures of the above notaries, dated June 17, 1872.

Here follows certificate of the United States consul at Mazatlan, to the signatures of the governor and his secretary.

Doc. No. 39.

Bill of sale executed at Mazatlan on the 25th day of September, 1865, before Antonio Aldrete, notary public.

This document shows that Juan Castillo de Valle, in his own behalf, and as attorney-in-fact of his partner, Ygnacio Manjarrez, joint and equal owners, did sell and transfer to Thomas J. Bartholow and David J. Garth, jointly, on behalf of himself and partner, all their right, title, and interest in the following mines and haciendas, for the sum of fifty thousand dollars, paid to them, and the receipt of which is ac-

knowledged, to wit: The Nuestra Señora del Rosario mine; the Luz mine; the Cristo mine; the Santos Ynocentes mine; the Arrayan mine; the Nuestra Señora de Guadalupe mine, of which the vendors own and sell five hundred and fifty feet, and the haciendas de Beneficio (or reducing works) of San Nicolas and Guadalupe.

Here follows certificate of General Prisciliano Flores, Governor and military commandant of the state of Sinaloa, dated Mazatlan, August 9th, 1872, to the signature of the above-named notary.

Here follows certificate of the United States consul at Mazatlan to the signature of Governor Flores, and his secretary, Francisco Salido Rodriguez.

Doc. No. 11.

By deed dated the 22d of October, 1866, David J. Garth and Thomas J. Bartholow made formal transfer to the Abra Silver Mining Company, of all the right, title, and interest, which they individually or otherwise had in the foregoing mines and haciendas, viz: the Rosario mine, the Luz mine, the Cristo mine, the Santos Ynocentes mine, the Arrayan mine, five hundred and fifty feet of the Nuestra Señora de Guadalupe mine, twenty-two equal twenty-fourth parts of the Abra mine, and the haciendas de Beneficio (or reducing works) San Nicolas and Guadalupe, and in said deed of transfer, they set forth that said mines and haciendas were acquired by them, and the title thereto was taken and held by them, for the benefit of and in trust for said company, and with funds which said company have furnished; which deed is executed before Henry Snell, a notary public of the city of New York.

Doc. No. 14.

Deed refers to mines San Antonio, San Felipe and Bartholow, denounced by Thomas J. Bartholow, as the superintendent of the company, and by him formally transferred, by this instrument, to the Abra Silver Mining Company. Dated and executed in New York, October 22, 1866, before said Henry Snell, notary public of said city.

[These papers complete the chain of title of the Abra Silver Mining Company, to their mines and haciendas (reducing works) at Tayoltita, districts of San Dimas and San Ignacio, states of Durango and Sinaloa, Mexico.]

Translation of certificate of Governor Carrillo, of Durango, relative to original titles on file.

"I, General Florentino Carrillo, governor and military commandant of the State of Durango, hereby certify that Alonzo W. Adams, a citizen of the United States, presented a petition to this Government, asking for certified copies of various denouncements of mines and reducing works therein stated, and which is as follows:

"*To the Governor and military commandant of the State:*

"Alonzo W. Adams, a citizen of the United States, appears before you and most respectfully represents, that he is a stockholder in, and attorney-in-fact of, the Abra Silver Mining Company, as is shown by the power now produced, and which he requests be returned to him, it being a general one, in which character he requests you to be pleased to direct, that certified copies be furnished to him of the documents mentioned at the end of this petition, the originals of which should be found in the office of the Secretary of the Government, they being essential to the interests of the company, as aforesaid; wherefore I request the favor of you to order their speedy delivery.

"A. W. ADAMS."

"DURANGO, *June 4th*, 1872."

(Order on the margin.) "Let search be made for the antecedents, and furnish the petitioner with the corresponding copies.

(Signed,) "CARRILLO.

"JOSE PALAO, *Secretary.*"

At the foot of the petition is as follows:

"*Mina del Cristo,*" "a certified copy of the papers relating to the denouncement of this mine, of which possession was given on the 4th of September, 1863, and the title deeds on the 9th of the same month and year."

"*Mina de los Santos Inocentes;*" "a certified copy of the papers relating to the denouncement of this mine, dated on the 24th of August, 1865."

"*Mines of San Felipe,*" "*San Antonia y Bartolow;*" certified copies of the possession or title deeds issued by the Government relating to these mines, also certified copies of the papers relating to the denouncement of these mines made by Mr. Bartholow, for account of the company, in the year 1865."

"*Hacienda (reducing works) of San Nicolas;*" "certified copy of the denouncement made by Juan Castillo de Valle and Ygnacio Manjarrez, of the reducing works at Tayoltita, known formerly as the Carmen, now as San Nicolas, on the 30th of April, 1857."

"*Mine of Nuestra Señora de Guadalupe;*" certified copy of the papers relating to the denouncement of this mine, situated at Tayoltita, made by Juan Castillo de Valle, and Ygnacio Manjarrez, possession of which was given by Governor José M. Patoni, on the 9th of September, 1863."

16 "*Mine de la Abra;*" "certified copy of the papers relating to the denouncement and possession of the said mine, which was denounced by Messrs. Luke and Luce, about the years 1863 or 1864; also copy of the transfer of the said mine made by these parties."

"*Hacienda (reducing works) of Guadalupe;*" "copy of the denouncement made of this hacienda, situated at Tayoltita, which was made by John Cole, a citizen of the United States, possession of which was given by Governor Mascarenas, on the 29th of March, 1864.

"The interests of the company further require that copies be given to it of denouncements which may have been made since April, 1868, up to the present time, of the mine *Nuestra Señora del Rosario*, and of the "*Luz*," which is within the boundaries of the former; of the "Cristo," the "Santos Ynocentes," "Nuestra Señora de Guadalupe," "San Felipe," "San Antonio," "Bartolow," and the "Abra," all of which mines are located in the Abra mountain, mining district of Tayoltita, State of Durango, also of the "Haciendas of San Nicolas" and "Guadalupe," the former acquired by the denouncement of Messrs. Juan Castillo del Valle and Ygnacio Manjarrez, in the year 1857, and the latter through purchase made by the said Castillo de Valle, from Miguel de Laveaga, on the 13th of July, 1865, which hacienda is contiguous to the said hacienda of San Nicolas, and of another, "Hacienda de Beneficio," also called "Guadalupe," acquired through the denouncement of John Cole, on the 29th of July, 1864." "These haciendas are all located in the mining district of Tayoltita, in the State of Durango. Also a certificate to the document dated June 6th, 1865, signed by lawyer Jose Palao, as Secretary of the Government, extending the time for working the "Cristo" mine, located at Tayoltita.

"A. W. ADAMS."

"DURANGO, *June 4th*, 1872."

"Having made an examination of the archives, there were only found there the papers relating to the denouncement of the mine "Nuestra Sra-del-Rosario," made by Santiago Granger, an Englishman, on the 8th of April, 1871, of which the corresponding certified copy was given. The other copies requested by Mr. Adams cannot be given, because the "expedientes," which were in this, the office of the Secretary, were removed by order of the Governor of the State, General José M. Patoni, on account of the French invasion, to Parral, or Chihuahua, together with the archives pertaining to the years referred to by Mr. Adams, in his petition, and it is not known where the archives can be found.

And at the request of the party interested, I give the present at Durango, on the 25th of June, 1872.

"F. CARRILLO."

"JOSE PALAO, *Secretary.*"

Here follows certificate of the United States consul, at Mazatlan, dated August 17, 1872, to the signatures of the Governor and Secretary.

Certified copy of the papers relating to the denouncement of the Nuestra Señora del Rosario mine.

The copy of the papers contained in this denouncement, now on file before this Commission, show: That James Granger, an English subject, denounced the
17 "Rosario mine," formerly belonging to La Abra Company, at Tayoltita. The denouncement was dated at San Dimas, April 8th, 1871. The usual formalities prescribed by the mining ordinances having been completed, formal possession of the mine was given to the said James Granger and Francisco Torres, his partner, by the "Deputacion de Mineria" mining board, on the 11th of August, 1871. The papers show that there was no opposition made to either the denouncement or possession.

At the end of the copy of the papers relating to Granger's denouncement appears the copy of A. W. Adams' petition as attorney-in-fact of the "Abra Silver Mining Co.," dated Durango, June 4, 1872, addressed to the governor and military commandant of the State soliciting the said copy.

[Seal.] Here follows a certificate of the governor's chief clerk, that the foregoing is a true copy.

Here follows certificate of the United States consul at Mazatlan, to the signature of the governor's chief clerk.

NOTE.—This document has no bearing upon the claimant's title, and is irrelevant, except so far as showing that the mines have been subsequently denounced, and possession of them given to Granger and Torres by the authorities.

At the request of counsel for claimant, I have made the foregoing abstract or brief of perfected titles to the mines and haciendas of the Abra Silver Mining Company, from the original denouncements and title deeds, down to and including the conveyances to the company.

WM. C. TRIPLER,
Official Translator U. S. and Mexican Claims Commission.

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18 *In the matter of claim for damages of La Abra Silver Mining Company against the United States of Mexico, under the Convention between the United States of America and the United States of Mexico, of July fourth, one thousand eight hundred and sixty-eight. To be submitted on the part of the United States of America to the Commissioners appointed under that Convention.*

DEPOSITIONS.

Doc. No. 9.

Deposition of Charles H. Exall, a witness on the part and behalf of said La Abra Silver Mining Company, taken before Hon. George G. Barnard, a justice of the supreme court of the State of New York.

Said Charles H. Exall, being duly sworn according to law, deposes and makes answer to the several interrogatories propounded to him, as follows, to wit:

Question number one. Where were you born and where do you reside, and what is your age and occupation?

Ans. I was born in the city of Petersburg, in the State of Virginia, in the United States of America; I reside in New York city; I am twenty-nine years of age, and my occupation is that of a merchant.

Question number two. Where did you reside, and what was your occupation from about September eleventh, eighteen hundred and sixty-six, to about March twentieth, eighteen hundred and sixty-eight?

Ans. I resided at Tayoltita, in the district of San Dimas, in the State of Durango, in Mexico, and I was engaged for and in the employ of "La Abra Silver Mining Company, superintending their mines and mining work and operations at their mines called "La Abra," at Tayoltita aforesaid.

Question number three. State, if you know, under what laws was said La Abra Silver Mining Company incorporated? Where was and is its principal office and place of business, and who was and is its president?

Ans. Said company was incorporated under the laws of the State of New York, in the United States, and its principal office and place of business was and is in the city of New York; and William L. Hearn, then of the city of Brooklyn, in the State of New York, now residing in the State of Missouri, was its president, when I was first employed by said company, but subsequently George C. Collins, of the city of New York, was made and still is its president.

Question number four. Does said company continue its mining work and operations at said mine?

Ans. No, it does not.

Question number five. When did said company cease its work and operations at said mines?

Ans. When I left Tayoltita, in Mexico, which was about March twentieth, eighteen hundred and sixty-eight, on or about that date.

Question number six. Why did said company cease its work and operations at said mines? State the reason, if you know.

Ans. Because I, and the men under my superintendence working at the said mines, were compelled to quit and abandon the company's mining operations and property because the interference, annoyance, and molestation we received during the progress of the work rendered success in it impossible, and rendered a continuance of the work dangerous to person and property, and intolerable, if not absolutely impossible.

19 Question number seven. State in what the annoyance, molestation, and interference consisted, and from whom they came, and when they occurred, and how you were compelled to abandon your said work and the mines of said company? State fully.

Ans. The feeling and prejudice of the authorities, both military and civil, and of both the local and national authorities, at Tayoltita, and in the States of Durango and Sinaloa, were very inimical to us. It was currently reported by the Mexican authorities and citizens, and we were accused of meanly coming there for the purpose of purloining the silver and gold of Mexico with which to enrich the United States, and finally of stealing the States of Durango and Sinaloa from Mexico, by annexation of the same to the United States, and this feeling and prejudice soon took an active hostile form, and our lives were threatened by both the citizens and the troops of the legitimate Government of Mexico under President Juarez, its present Chief Magistrate; those threats were frequently made, and we were in constant fear for our lives, and in pursuance of these threats, one of the employees working for said company, was actually killed while coming up from Mazatlan with a train of mules for said company, and we were finally driven off, and compelled to abandon our mining operations, by said authorities. The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of fifty dollars, and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offence against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine; no good reason ever having been given me for my arrest or release. I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company; and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company, to save our lives. I cannot state dates and names with any degree of certainty. Mexican names are hard for me to remember. The Imperialist soldiers, and citizens sympathizing with their cause, also threatened and interfered with us, for the reason, as they stated, that we were in sympathy with the legitimate Government of Mexico under President Juarez. Said interference occurred at various times during the whole progress of the work while I was superintendent, and we were finally compelled to abandon the company's mines and property, about March twentieth, eighteen hundred and sixty-eight.

20 The military authorities of the liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains on the road from Mazatlan to our mines in the State of Durango, loaded down with provisions and stores for the use of the employees of said company, and they, the military, appropriated them to their own use, upon the plea that they were not provided for, and must have them as a military necessity.

Large numbers of our mules, and thousands of dollars worth of our stores and provisions, were captured in this way by the said military, during the progress of the war there.

And finding it little or no better at the close of the hostilities, indeed it was even worse in the mines, for then they seemed to turn their whole attention to what they called a purpose on our part to annex Durango to the United States. And it was in vain that we protested that we had no such intention.

The report had become general, and we were so harassed that it was impossible to continue our work with safety, as I have before stated.

The military under Maximilian frequently captured our mules and stores in the same way, and shamefully abused our men, who were conducting the trains; they assigned as a reason for so doing that we, the said company, and its employees, were

Republicans, and hostile to the interests of their so-called Imperial Government, which was true.

And so, between the two fires, we had no protection, neither of the contending parties respecting our rights under the law, but both of them robbing us. Large quantities of silver ore was taken or stolen from our mines after we had taken it out, and such were the threats against us, that we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were the very richest, and those containing the largest amount of silver.

The captures or robberies of our mules and stores, of which I have spoken, occurred at various times during the latter part of 1866, and the early part of 1867; that is, the most of them occurred during the times stated, and principally by the liberal authorities.

Question number eight. After that abandonment, what further was done by said company or by you, as their superintendent in said mines?

Ans. Nothing by me, and nothing further by the company, so far as I know.

Question number nine. Why was nothing further done by you and by said company?

Ans. Because I did not dare to return and resume mining operations there. I was, and am satisfied that I could not do so with safety to the life of myself or my workmen, or with safety to the property of said company, such was the hostile feelings or prejudice against said company as citizens of the United States, and further prosecution by said company of mining operations there, both on the part of the citizens and the local and national authorities of the Mexican Republic, and the violent acts resulting from that feeling and prejudice, being encouraged and connived at by said authorities, as I have stated. And I returned to the State of New York, and advised said company that it was useless to attempt any further working of said mines, and gave them the facts above stated as my reason for that advice; and I understand that said company was so advised by others, who were citizens of Mexico.

Question number ten. What was the work done by said company at said mines, and being done by said company, through you, as superintendent, at the time you were compelled to abandon the mines, as above stated?

21 Ans. Opening of the mines "La Abra," excavating and constructing mill races, building a mill house, erecting a ten-stamp mill and machinery, building store-houses, dwelling houses, blacksmith shops, stables, "patios," tanks and reduction works, getting out silver ore, and generally doing the requisite work and constructing the requisite machinery and works preparatory to a thorough working of the said mines, and reduction of the ores taken from the same.

Question number eleven. How much money was expended by said company in and about the work which was done by them at said mines, and in the purchase and erection of mills, storehouses, dwelling houses, shops, and other buildings, machinery, mining implements, &c., which you have mentioned? State fully, if you know.

Ans. Said ten-stamp mill was purchased in San Francisco, California, and it cost said company to buy it and place it on the ground at their said mines, over sixty thousand dollars in gold; said company expended on said mill-house and other things pertaining thereto, over fifty thousand dollars in gold, and the precise amount expended by said company for mules, mining implements, mining stores, labor, and transportation of provisions, stores, and other necessaries, in and for the opening of their said mines, and construction of their mill races, river dams, tanks, reduction works, &c., and erection of machinery, I do not know, but the same is not less, I believe, than two hundred and seventy thousand dollars in gold, and may have been very much more than that amount. The only mode of transporting their mill, machinery, provisions, and materials, was on mules' backs, and that was a very expensive and tedious mode of transportation, and especially in that country, through those terrible "cañons" and over the mountains, one hundred and sixty miles interior from Mazatlan.

Question number twelve. What was the character of the mines "La Abra," belonging to said company, as to the quantity and purity of the ores of the same?

Ans. Said mines were the richest silver mines I ever saw, and, as I believe, were the richest silver mines in the State of Durango. The silver ore was abundant, and as tested by myself, and by a Mr. Elder, a practical assayer, contained and yielded from two hundred to fifteen hundred dollars per ton of pure silver, together with about ten per cent. of gold.

Question number thirteen. What was the effect upon the interests, and especially the stock of said company, by the forced abandonment of said company's mines and property, for the reasons you have given?

Ans. As the company was not allowed to continue its mining operations it was virtually ruined, and when the fact and reasons of the forced abandonment of their mines became known, the stock of the company became valueless, and it could not have been disposed of at any price, as I believe.

Question number fourteen. From your knowledge of said mines and the condition of the mining operations and works of said company at said mines, how much silver, in your opinion, could have been taken from said mines by said company, had the operations of the company not been interfered with, and its employées had been free from the interruptions and molestations you have above detailed, and said company had been allowed to work said mines to the present time?

Ans. That, of course, would have depended upon circumstances, but with no
22 more than ordinary accidents, and with as good weather as we had when I was there, I should say the company could have taken out silver ores, in addition those we had out at the time of said abandonment, and reduced them to silver to the amount of at least one and one half millions of dollars, over and above the cost of mining and reducing the ores. At the time of said abandonment, we had dug out, and at the company's mill, I should say between six hundred and fifty and seven hundred and fifty tons of silver ore, and we had dug out at the various mines, but not yet taken to the mill, I should say two hundred and fifty tons more. Those ores would have yielded the company, above the cost of reducing them to silver, in my opinion, one million of dollars.

Question number fifteen. From your knowledge of the affairs and property of said company, and especially of said mines, and of the effect of said abandonment upon the interests of said company, what, in your opinion is the amount of the damage sustained by said company, by reason of said forced abandonment of said mines and property, as detailed by you?

Ans. I should think the damage would be the amount of money the company had expended, with interest, including a fair allowance to its officers, and the value of the ores which the company had out at the time of said abandonment, and what they would ordinarily have realized from the mines from that time to this, above their expenses. Considering such their damages, in my opinion the total damages sustained by the company is not less than three millions of dollars.

Question number sixteen. Have you any interest, direct, contingent, or otherwise, in the claim of said "La Abra Silver Mining Company" against the Republic of Mexico, and to support which your testimony has above been taken?

Ans. None whatever of any kind or nature; all my claims against said company have been fully paid by them.

Question number seventeen. Are you the attorney or agent of said "La Abra Silver Mining Company," or of any person having an interest in said claim?

Ans. I am not. I have no connection with them in any way, and have had no business relations with said company, except that of superintending their said mines, as I have before stated; and as that has long since been settled, I have no interest in them, and have no feeling in the matter of this claim against Mexico, and no kind of interest in its result, directly or indirectly.

Question number eighteen. What was the political condition of the Republic, or United States of Mexico, at the time you were living there and superintending the operations of "La Abra Silver Mining Company?"

Ans. The political condition of Mexico was at that time very bad; it was in a state of war. A civil war was at that time going on in Mexico, to some extent, and in addition to that, Mexico was then invaded by French troops, who were endeavoring to support an Imperial Government under Maximilian.

Question number nineteen. What was the attitude of the said "La Abra Silver Mining Company" towards the then contending parties, or forces in Mexico?

Ans. The said Company was at all times loyal and faithful to the interests of the legitimate Government under President Juarez, the present Chief Magistrate of that Republic. The company was, and is now, composed of American citizens, and I can not conceive of any other attitude for them than that of loyalty and faithful-
23 ness to President Juarez and the Republic. We were all anxious for the overthrow of Maximillian, the expulsion of the French troops, and the re-establishment of peace under President Juarez and the Republic.

Question number twenty. What just cause, if any, was there for the treatment received by said company and their employees, from the authorities and citizens of Mexico, as detailed by you?

Ans. None whatever, to my knowledge or belief; neither myself, nor said company, nor any member or operative of the same, to my knowledge or belief, ever molested or interfered with any of the authorities of Mexico, local or national, civil or military, nor any of the citizens of Mexico, nor disobeyed any of the laws of Mexico, while I was so superintending there. The report circulated to the disparagement of the company, that the company, or any member or person acting for the same, intended to advocate or aid the annexation of Durango or Sinaloa to the United States of America, had no foundation in fact, and there was not even a decent pretext for the molestation of, and interference with the company by the authorities and citizens of Mexico, which I have mentioned.

Question number twenty-one. How many men, in all, were employed by said company, during the time you superintended their said works at Tayoltita?

Ans. From thirty to one hundred and fifty employees in all; sometimes the rainy weather prevented our working a larger number, and frequently we were so harassed by the citizens and authorities, as I have before stated, that we were compelled, for weeks at a time, to keep only the smaller number.

(Signed) CHAS. H. EXALL.

Subscribed and sworn to before me, this second day of December, A. D. 1869.

(Signed) GEORGE G. BARNARD,
Justice Sup. Court.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, ss:

George W. Hardie, of New York city, being publicly and duly sworn according to law, to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows: I reside at 137 East Twenty-first street, in the city and State of New York; I know Charles H. Exall, who has made the foregoing deposition; that he is a credible witness, and his deposition is entitled to full faith and credit; that I have no interest in the claim to which the foregoing testimony of said Exall relates, and that I am not the agent or attorney of any person having such interest.

(Signed,) G. W. HARDIE.

Subscribed and sworn to before me this 2d day of December, A. D. 1869.

(Signed,) GEORGE G. BARNARD.

In original this follows the certificate of George G. Barnard, which it here precedes.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, ss:

I, George G. Barnard, a justice of the supreme court of the State of New York, do hereby certify that Charles H. Exall, whose deposition is herein above contained, attended before me on the 2d day of December, 1869, at the county court-house, in the city of New York, and was publicly and duly sworn by me, according to the laws of the State of New York, to tell the truth, the whole truth, and nothing but the truth; and thereupon he deposed and testified, in answer to the foregoing ques-
24 tions, as hereinbefore set forth; that said deposition was carefully read to said Charles H. Exall by me, and that he thereafter signed the same in my presence.

I do further certify that said deposition was taken by me in the city of New York, in the State of New York, in the United States of America; that I am competent by the laws of said State, and of the said United States to take depositions; that I have no interest in the claim to which the testimony of said Charles H. Exall in said deposition relates, and that I am not the agent or attorney of any person having such interest.

I do further certify that said deposition was reduced to writing by Henry Snell, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in the said claim.

And I do further certify that I do not know the said Charles H. Exall, but do know George W. Hardie, who certifies below, upon oath, to the credibility of said Charles H. Exall; and I hereby certify to the credibility of said George W. Hardie.

(Signed,) GEORGE G. BARNARD,
Justice Sup. Court.

Doc. No. 8.

In the matter of the claim for damages of La Abra Silver Mining Company against the United States of Mexico under the convention between the United States of America and the United States of Mexico, of July fourth, one thousand eight hundred and sixty-eight, to be submitted on the part of the United States of America to the commissioners appointed under that convention.

Deposition of Alfred A. Green, a witness on the part and behalf of said La Abra Silver Mining Company, taken before Hon. George G. Barnard, a justice of the Supreme Court of the State of New York:

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, ss:

Alfred A. Green, being duly sworn according to law, deposes and says as follows, to wit:

My name is Alfred A. Green; my age is forty-one years; I was born in the village of Norton, in the province of New Brunswick, in British North America; my occupa-

tion is that of a miner; my residence I claim to be at San Dimas, district of San Dimas, in the State of Durango, in the United States of Mexico, although I am not permitted to live there at present, having been driven from the country; my family are now residing at San Francisco, in California; I am here in the city of New York, transiently on business.

For the greater part of the twenty years last past I have resided in the Republic of Mexico, and during that time I have held several important commissions from the State authorities of some of the Mexican States. In the year 1859, I was commissioned jointly with Don Urbano Gomez, by General Ogazon, then the civil governor of the State of Jalisco, and the military governor of that State and the State of Colima, to raise material aid for the cause of President Juarez, against the so-called "Church party" of Mexico, and I rendered the State some service in that respect. Afterwards, while residing at Mazatlan, in Mexico, I was appointed by the late General Patoni, who was then governor of the State of Durango, commissioner of emigration for that State, and also by the governor of Sinaloa to the same position for that State, and as such commissioner I went to California and induced a large mining emigration to those two States, the emigrants investing in those two States, principally in silver mining, a large amount of capital, as nearly as I could ascertain
25 about ten millions of dollars. Afterwards, and sometime in the early part of the year eighteen hundred and sixty-five, while residing in the State of Durango, and after that State had been invaded by the so-called Imperialists, having been taken prisoner at El Rosario by the traitor, General Lozado, and sent to Mazatlan, with "permission to go seaward," I went "seaward" by the first steamer to California. About that time I was commissioned to assist General Gasparo Sanchez Ochoa, in the Liberal cause, and especially in securing moral and material aid for the Government of Mexico, under President Juarez. Through my exertions the Monroe League was organized at San Francisco, from which my brother, Colonel George M. Green, an officer of the Mexican army, took sixty American officers and men, armed and equipped, to Mexico, to assist the Liberal cause under President Juarez. In October, eighteen hundred and sixty-five, acting under the instructions of said commissioner, General Gasparo Sanchez Ochoa, I went to the city of New York, and was a part of the time occupied in writing and publishing a work entitled the "Vindication of Liberal Mexico." In December, eighteen hundred and sixty-seven, or January, eighteen hundred and sixty-eight, I returned to Mexico, and from that time to the last of December, eighteen hundred and sixty-eight, I resided in the district of San Dimas, in said State of Durango, and was engaged the principal part of that time in mining operations at the mine "San Louis," in that district, and my occupation at that time was mining. I then owned, and still own, twenty-two and one-half twenty-fourths (22½–24) parts of that mine, and I am also largely interested in other mines in that district.

I know the mines called "La Abra," in the State of Durango. It is situated at Tayoltita, in the same district of San Dimas. I also know "La Abra Silver Mining Company," the company that owned and worked said mines "La Abra." I am well acquainted with some of its officers, and many of its stockholders. They are all, as far as I know them, citizens of said United States of America. In January, February, and March, eighteen hundred and sixty-eight, I was frequently at said mines "La Abra." It is distant about two Spanish leagues from my said mine "San Louis." I saw and knew what said "La Abra Silver Mining Company" had done and was doing at its said mines "La Abra." That company had erected, constructed, and built, and had in progress of erection, construction, and building, sheds, stables, dwelling-houses for its employees, a stamp mill-house, reduction works, tanks, "patios," blacksmith shops, a ten stamp mill, and machinery for the same, also large mill races, and was excavating, and had got out and was getting out a large quantity of silver ores, in short, was doing everything requisite to a working of said mines on a grand scale, and in the most effective manner. The company had a large number of men in its employ, though the number was not uniform—sometimes more and sometimes less. Charles H. Exall was the company's superintendent at that time. I am well acquainted with him; he is a citizen of the United States of America.

That company was hindered and delayed in the progress of its work, and was finally driven off and compelled to abandon its mines, ores, and property, by the acts of the authorities of Mexico. In January, eighteen hundred and sixty-eight, at San Dimas, I heard some Mexican citizens, in the presence of the "Juez" of that place, declare that they would kill or drive away all the men of that company, and the threat was applauded by the "Juez." One of the men of that company was killed by
26 some Mexican soldiers of the Republic of Mexico, near El Toro, State of Sinaloa, while on his way to the company's mines from Mazatlan, with a mule-train of supplies for the company, and the mules and supplies were taken by the soldiers. I did not see the act done, but know that the man was killed, and it was a matter of common report that he was killed by the soldiers, and the mules and supplies taken by them, and sometime after the act I heard one of the officers of the Republican

army of Mexico boast of having taken part in said act, whose name I can not now remember. He avowed the act, and justified it on the ground that the army of President Juarez needed the mules and supplies, and there was no other way to obtain them. In my hearing, some Mexican authorities said that they intended to drive out all the American mining companies, as they had done with the "Candelero Company," and get their mines and property; they were local authorities at San Dimas; amongst the number, I heard the acting prefect and judge of the first instance say so. The same remarks, or similar remarks as those applied to the "Candelero Company," and by the same authorities at San Dimas, were made as to the driving out of "La Abra Silver Mining Company." This was in April, 1868. I speak and understand readily the Spanish language, spoken by Mexicans.

Immediately after said expulsion from the mines Mr. Exall left the country, as his life was not safe there, and the mines and property of the company were abandoned by the company, and up to the time when I was forced to leave San Dimas, in December, 1868, said "La Abra" company had not resumed work.

There was no cause on the part of that company, or its employees, that I knew or could hear of, for those acts against the company. Mr. Exall, the superintendent, was a very peaceable, quiet, and law-abiding man.

After the expulsion of said "La Abra Company," which I have mentioned, in March, 1868, Mexicans were engaged in carrying off its ores, and it would have been impossible for the company to have returned and continued its mining operations. Any persistent attempt to do so, I am sure, would have only resulted in the killing of the superintendent and his officers. My long residence in Mexico, and my ability to converse in the Spanish language, and the interest which I had taken in the Liberal cause, and services I had rendered it, (which were well known in the State of Durango,) enabled me to mingle freely with the inhabitants, and for a long time, and until a short time before I was driven away from San Dimas, I was regarded by most of the Mexicans more as one of them than as a foreigner, and matters were talked of by the citizens before me as freely as if I had been a native-born Mexican, and I know well the state of feeling of the citizens of the State of Durango, and the Mexican authorities, civil and military, against foreigners in general, and citizens of the United States of America (or Americans, as they were called) in particular, at and subsequent to the commission of the acts against said "La Abra Silver Mining Company," which I have mentioned. It was very bitter, and ended in open hostility and violence. The report was industriously circulated that the object of the Americans, and especially "La Abra Company," was to annex Durango, Sinaloa, and other border States to the United States of America. Such, I know, were not the views or aims of Mr. Exall, nor of other Americans in charge of neighboring mines, whom I knew. The report was circulated to inflame the more ignorant classes. The real object, it was evident, was to get possession of the mines and property of the American companies, and the benefit of their expenditures.

27. On several occasions, in January, February, and March, 1868, in San Dimas district, I have heard Mexican citizens and authorities say that they meant to drive out and kill off all the Americans, and get their mines and property.

This feeling of hatred and hostility was shared by the military authorities and soldiery, and by the local civil authorities, and was encouraged by them. It grew in intensity and boldness until it culminated in open violence and forcible dispossession of "La Abra" and other companies. Several other American companies, besides "La Abra," were driven off in a similar way. Any attempt to obtain restitution or protection from the authorities was vain, and only increased the personal danger. The feeling became so general against all foreigners having mines that at last it extended to me, notwithstanding my long residence and services. I was arrested in said San Dimas, by order of Camilo Perez, judge of the first instance, on a fictitious charge, and imprisoned for about thirty days, and when I got my liberty found that my mine "San Louis" had been seized, and was in possession of some Mexican citizens and authorities. I applied for redress to the civil authorities at San Dimas, Gabilanos, and at the capital of the State of Durango, without being able to get any protection or restitution of my property. Through the influence of some friendly Mexicans with Camilo Perez, he released me.

I went to Durango, the capital, for restitution and protection, but did not find Governor Palacio, as he had gone to the city of Mexico. I applied to the next in authority, and failed to get from him any protection. In December, 1868, the "Juez de Paz" of San Dimas, or justice, summoned before him some of the parties who had taken possession of my mine and property, and thereupon the demonstration of said parties became so great and violent, threatening the magistrate for his interference with them, and to take my life if he did me justice, that the magistrate was overawed, and told me that nothing could be done for me and my friends; and said justice advised me that my life was no longer safe there, which I believed to be the fact, and to save it I left the country.

From my knowledge of the feelings of the citizens and authorities in San Dimas,

and the situation of affairs there, and from my own case, I am confident that after the acts against said "La Abra Company," any effort on the part of said Exall, or of any one else for said company, to continue mining operations would have resulted in his or their death by violence. In the foregoing statements, owing to not having my papers here, official and unofficial, I am not able to give the exact dates or names in all cases, but have given the same according to my best recollection, and have also given the names of the Mexican officers and authorities, so far as I have known them and can now remember them.

I am well acquainted with said mines "La Abra," and with the quantity and richness of its ores; the silver ores were abundant, and were rich in silver, and would yield, in my opinion, from one hundred dollars to two thousand dollars of pure silver per ton of ore, and in those respects it was reputed to be the second best mine in the State of Durango. When said "La Abra Company" was compelled to abandon its mines and property, as I have sated, it had dug out and ready for reduction a very large quantity of silver ores—in my best judgment—more than one thousand tons. This would have yielded the company over and above the cost of its reduction, several hundred thousand dollars worth of pure silver; from my knowledge of the ores of

28 that mine, I should say at least a half a million of dollars. I am well acquainted with the cost and value of mining labor, materials, stamp-mills, machinery, constructions, and erections for mining purposes in the State of Durango, and transportation in Mexico in and prior to the year 1868, and, in my opinion, the stamp-mill, machinery, mining structures and works which I have mentioned as having been, and being done by said "La Abra Company" in January, February, and March, 1868, were worth, and were of the value of, when said company was compelled to abandon them in the latter part of March, 1868, not less than three hundred thousand dollars gold. In my opinion, they must have cost the company that sum, or more. From my knowledge of mining and of said mines "La Abra," and of the facilities of said "La Abra Company" for carrying on its mining operations, in my judgment that company could have taken from its mines silver ores and reduced them to silver to the value at least of one and one-half millions of dollars, over and above the cost of mining and reducing the same, between the first day of April, 1868, and the first day of December, 1869, if said company had been left free from outside interference, and had not met with more than the usual and ordinary difficulties and obstructions incident to mining in that region.

I have no interest of any kind or nature, direct, contingent or otherwise, in the claim of said "La Abra Silver Mining Company" against the United States of Mexico, to support which my testimony is now taken and given; nor am I the agent or attorney of said company or of any person having any interest whatever in said claim; nor have I any prejudice or hostile feelings against the authorities or people of Mexico, but, on the contrary, I still cherish for them a warm feeling of friendship and sympathy.

(Signed) ALF. A. GREEN.

Subscribed and sworn to before me, this 13th day of December, A. D. 1869.

(Signed) GEORGE G. BARNARD, *J. S. C.*

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, ss:

I, George G. Barnard, a justice of the supreme court of the State of New York, do hereby certify, that Alfred A. Green, whose deposition is hereinabove contained, attended before me, on the thirteenth day of December, A. D. 1869, at the county court-house, in the city of New York, and was publicly and duly sworn by me, according to the laws of the State of New York, to tell the truth, the whole truth, and nothing but the truth, and thereupon he deposed and testified as hereinbefore set forth; that said deposition was carefully read to said Alfred A. Green by me, and that he thereupon signed the same in my presence.

I do further certify that said deposition was taken by me in the city of New York, in the State of New York, in the United States of America; that I am competent, by the laws of said State and of the United States, to take depositions; that I have no interest in the claim to which the testimony of said Alfred A. Green in said deposition relates, and that I am not the agent or attorney of any person having such interest.

I do further certify that said deposition was reduced to writing by Michael Phillips, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

29 And I do further certify that I do not know the said Alfred A. Green, but do know William R. Gorham, who certifies below upon oath to the credibility of said Alfred A. Green, and I do hereby certify to the credibility of said William R. Gorham.

(Signed) GEORGE G. BARNARD,
Justice Sup. Ct.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, ss:

William R. Gorham, of New York City, being publicly and duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, deposes and says, as follows; I reside at No. 135 west 26th street, in the city and State of New York; I know Alfred A. Green, who has made the foregoing deposition; that he is a credible witness, and his deposition is entitled to full faith and credit; that I have no interest in the claim to which the foregoing testimony of said Green relates, and that I am not the agent or attorney of any person having such interest.

(Signed) WM. R. GORHAM.

Subscribed and sworn to before me, this 13th day of December, A. D. 1869.

(Signed) GEORGE G. BARNARD.

Doc. No. 25.

In the matter of the claim for damages of La Abra Silver Mining Company, against the United States of Mexico under the convention between the United States of America and the United States of Mexico, of July fourth, one thousand eight hundred and sixty-eight, to be submitted on the part of the United States of America to the commissioners appointed under that convention.

Deposition of George C. Collins, a witness on the part and behalf of said "La Abra Silver Mining Company," taken before Hon. Calvin E. Pratt, a justice of the supreme court of the State of New York.

Said George C. Collins, being duly sworn according to law, deposes and says as follows, to wit: I am sixty-one years of age; I was born in South Hadley, Hampshire county, Massachusetts; I reside in the city of New York, in the county of New York, and State of New York, and have resided here since the year 1842.

I am a wholesale tea merchant, doing business in said city of New York, and during all the time hereinafter mentioned was such merchant, doing business at said city.

I am the President of "La Abra Silver Mining Company," and have been since October 23, 1866. Said company was incorporated November 21, 1865, under and pursuant to an act of the legislature of the State of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and the several acts extending and amending said act; and one of the objects for which said company was incorporated was the mining of argentiferous and other ores in Mexico. The principal office of the company was and is in the city of New York.

Said company purchased the following-named mines and haciendas in Mexico, to wit: The mines Rosario, La Luz, El Cristo, Los Inocentes, 550 feet of the mine Nuestra Señora Guadalupe, 22 equal undivided 24th parts of the mine La Abra, and the haciendas St. Nicholas and Guadalupe, and the water power appertaining thereto, all situate at Tayoltita, in the State of Durango, and the mines La Arrayon, El Sous and La Talpa, situate in La Talpa mountain, in the State of Sinaloa; and
30 the following-named mines were denounced by Thomas J. Bartholow, as superintendent of and for said company, viz: San Felipe, San Antonio, and Bartholow, all situate at Tayoltita aforesaid. The said mines situate at Tayoltita were commonly known collectively by the name of "La Abra Mines." Prior to the purchase of said mines and property said Bartholow and David J. Garth (both of whom are stockholders in said company) were sent to Mexico by the parties forming said company to examine, and if desirable to purchase the same. They purchased them, and by advice, took the deeds in their own names, though in fact, in trust for said company; they paid for the same with the means which the company have furnished, and they subsequently duly conveyed the same to said company.

All the said mines and haciendas which were purchased by said company, except the $\frac{22}{24}$ parts of the mine La Abra, were purchased of and conveyed by Don Juan Castillo de Valle and Don Ygnacio Manjarres, by deed dated at Mazatlan, September 25, 1865, for fifty thousand dollars, and said $\frac{22}{24}$th parts of said mine La Abra, were purchased of and conveyed by J. V. Hardy, by deed dated at Mazatlan in July, 1865, for twenty-two thousand dollars.

Said company obtained from subscriptions for and sales of its stock two hundred and thirty-five thousand dollars ($235,000), and there have been lent and advanced to and paid for said company sixty-four thousand two hundred and ninety-one dollars

and six cents ($64,291.06) more, making a total of two hundred and ninety-nine thousand two hundred and ninety-one dollars and six cents ($299,291.06), and this amount was expended by said company in the purchase of said mines, as aforesaid, and in the purchase of supplies, mules, machinery, and a ten-stamp mill, to be used at said mines, and for transportation of the same, and in the construction and erection of said mill, machinery, houses, dam, raceway, and mining works generally at said mines, and in work upon said mines and the extraction of ores therefrom.

The said company justly owe for office rent and expenses, salaries of officers, attorney and counsel fees, court legal expenses, forty-two thousand five hundred dollars ($42,500), and that said sums, with interest thereon to September 1st, 1870, amount to four hundred and thirty-seven thousand and sixty dollars and fifty-nine cents ($437,060.59).

Said company abandoned their said mines, works, silver ores extracted, and property, in March, 1868, the same at that time being under the charge, control, and supervision of Charles H. Exall, for said company. Upon said abandonment, and in consequence of it, the stock of said company became wholly valueless, and has so ever since remained, and the said company have wholly lost the moneys so expended and owing by said company and the profits which they would have realized from said expenditures.

Said company has not made any dividend, nor received any returns, nor been reimbursed for said expenditures, in whole or in part, and the silver ores which said company had extracted from their said mines was their reliance for getting back the moneys so expended and owing by them, said company.

As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of said company at that time, the quantity of silver ore which the company had then extracted at the mines, and its value and the quantity and value of silver ore which the said company could thereafter have extracted, deponent has no knowledge, except what is derived from statements of others, and the depositions of others made in this matter, which deponent believes to be true.

31 In the opinion of deponent, the said mines, improvements, and property (exclusive of ores extracted) of said company, at the time of said abandonment were of the value of about one million of dollars, and that deponent estimates the loss which said company have sustained by reason of said abandonment, at not less than three millions of dollars, including therein the value of the ores extracted at the time of said abandonment, and which might have been thereafter extracted, had said company been left in the quiet possession of said mines and property, as deposed to by others in this matter; deponent, as already stated, having no personal knowledge of the quantity and value of those ores.

The following are the names of the stockholders of said company, all of whom are citizens of the United States, viz: Thomas J. Bartholow, Miss Henrietta Bartholow, J. Wilcox Brown, G. C. Chase, George C. Collins, Isaac C. Day, Thomas Dougherty, M. J. Freedsom, Thomas M. Finney, Dabney C. Garth, D. J. Garth, John H. Garth, A. H. Gibbes, George F. Griffith, Irby V. Hardy, William L. Hearn, C. F. Mason, Frederick Mead, Mrs. J. A. Nettleton, S. F. Nuckolls, John D. Perry, William H. Ross, Sydney Shackelford, J. Oswald Swinney, F. Westwray, W. N. Worthington, Montague Ward, White & Earickson.

Deponent is the president of said company, as before stated, but he is not the attorney of said company, nor of any person having an interest in the claim of said company against the Republic of Mexico, nor is he the agent of said company, or of any person having an interest in said claim, unless the fact that he is said officer of said company shall be deemed to make him an agent for said company and its stockholders. Deponent is a stockholder of said company to the amount of five thousand dollars, at the par value of his stock, and he has been paid nothing by said company for his services as said president, and he loaned and advanced to said La Abra Silver Mining Company $21,145.17, which amount, with the interest thereon, is due and still owing by said company; and that deponent has no interest in said claim of said company against the Republic of Mexico, direct, contingent, or otherwise, except what may consist in the fact that he is said stockholder and president, and the moneys so lent and advanced by him to said company are still owing and unpaid by said company.

(Signed) GEORGE C. COLLINS.

Subscribed and sworn to before me, this 26th day of September, A. D. 1870.

(Signed) C. E. PRATT, *J. S. C.*

[Here follows certificate of Calvin E. Pratt, Justice Supreme Court New York State, to due execution of deposition and to credibility and respectability of witness.]

Doc. No. 13.

In the matter of the claim for damages of "La Abra Silver Mining Company" against the United States of Mexico, to be submitted to the commissioners appointed under the convention of July fourth, one thousand eight hundred and sixty-eight (1868) *between the United States of America and the United States of Mexico.*

Deposition of William H. Smith, a witness on the part and behalf of "La Abra Silver Mining Company," taken before George E. Whitney, commissioner and clerk of the United States circuit court, for the ninth circuit and district of Californi

UNITED STATES OF AMERICA,
State of California, City and County of San Francisco, ss:

William H. Smith, of San Francisco, having been first duly sworn according
32 to law, to tell the truth, the whole truth, and nothing but the truth in the above-entitled cause, deposes and says as follows, to wit:

My name is William H. Smith; my age is fifty-two years; I was born in the village of Whitehall, in the county of Washington, in the State of New York; my occupation is that of a miner; I now reside in the city of San Francisco, State of California, and am a citizen of the United States of America. In the year eighteen hundred and sixty-one, (1861,) in the month of November, I emigrated to the mineral district of San Dimas, in the State of Durango, in the Republic of Mexico, and I followed silver mining, as an occupation, in said district, for several years thereafter. I there became well and familiarly acquainted with the property and mines of "La Abra Silver Mining Company," a company organized under the laws of the State of New York, to work their said mines at Tayoltita, in said district of San Dimas. I owned, and worked to some extent, by Arrastra's and Patio process, a silver mine, called "Tecolota," distant by the road, about five miles from Tayoltita, or said La Abra Company's mines. I was immediately across the river and ravine from said La Abra mines, and I could plainly see the works and mining operations of said company at Tayoltita, from my said mine "Tecolota." I know the said mines, and have been upon them frequently, and all over them. There are a number of veins or "lodes" of silver, intermixed with a percentage of gold, at Tayoltita, all belonging to said mines, now the property, I believe, of said La Abra Silver Mining Company, unless they have been denounced and sold, or unless said mines and property have passed from their possession, by act of the Mexican authorities, or by denouncement, since said "La Abra Company" were driven away and forced to abandon them, which took place in eighteen hundred and sixty-eight, (1868.) I know, and have seen and tested the ores of said company's mines, and I am well acquainted with their quality and quantity as to richness of their ores and abundance of supply. Said mines were well known, and generally spoken of as exceedingly valuable property—one of the richest of the mines of San Dimas. All, or nearly all, of the veins or lodes, of different names, at Tayoltita, were owned by, and constituted the property of said company. They are somewhat famous in history, having been favorably spoken of by Baron Von Humboldt, in his Book of Travels, ("Essai Politique,") and commented upon at length by the British explorer, Ward, in reference to this same "La Abra" property, as follows, (Ward's Mexico, pages 559 and 573:) "The great streets," (of Durango,) "the Plaza Mayor, the theatre, and all the principal public edifices were built by Zambrano, who is supposed to have drawn from his mines at San Dimas and *Guarisamey* upwards of thirty millions of dollars. A little below *Guarisamey*, and in the *same ravine*, in the district of San José *Tayoltita*, which contains the celebrated mines of '*La Abra*,' one of the last worked by 'Zambrano.' It was opened in bonanza, and continued so, to the depth of 100 varas, where the progress of the work was impeded by water, and this was never drawn off, in consequence of the death of the proprietor, (Zambrano,) which took place at Durango in eighteen hundred and seven (1807.) His nephew, at the commencement of the revolution, collected what money he could, by extracting the pillars of all the mines belonging to the house of Zambrano, and fled to the peninsula with the produce. The mine now belongs to Don Antonio Alcade, one of the executors of Zambrano, and *would, if worked anew, with a little science and activity, probably yield immense profits.* The whole should
33 be undertaken, however, as *one* negotiation, as in such insulated districts, to make roads and organize supplies for a small establishment, is a very unprofitable task. Of the amount of the silver drawn from the Sierra Madre by Zambrano, during the twenty-five years that he continued his labors, nothing *certain* is known; but Mr. Glennie, from whose notes I have borrowed the whole of the details given above, states that he himself saw in the *books of the custom-house of Durango, eleven millions of dollars, registered as the sum paid by Zambrano as the 'King's fifth,'* and this fact was confirmed to me by the *Governor, who examined the registers himself, in order to ascertain it.* It is likewise corroborated by the number of mines opened at Guarisa-

mey, and the surrounding districts, by the *peculiar richness of their ores*, and by the immense wealth of Zambrano, (diminished as his profits must have been by the expenses of working,) of which so many splendid monuments remain," (page 130.) "*These immense riches were derived principally, the five great mines*, 'La Candelarea,' (at San Dimas,) 'San Juan Nepomuceno,' 'Cinco Senores,' 'La Abra,' and 'Tapia.'" On another page, which I have failed to enter upon my note-book, he says, "these mines often yield 20, and even as high as thirty, (30) marks per carga of 300 lbs."

The mines "La Abra" and "Tapia," spoken of in Ward's Mexico, with some adjoining veins or lodes at Tayoltita, are the same that were owned and worked by the "La Abra Silver Mining Company," in whose behalf this deposition is taken. I know nothing of the business of said company, now, nor do I know how much money they expended upon La Abra mines, at Tayoltita; but their expenditures must have been very large in the work of transporting their heavy machinery—a ten-stamp mill, with machinery necessary to put the same upon the ground in proper order for work—all of which, together with supplies of every description for the use of the company and its employees, had to be transported on mules' backs, over the most dangerous cañons, mountains, and precipices—a costly, tedious, and very hazardous mode of transportation—together with the expenses of placing said mill upon the ground, with the requisite machinery for the same. I did not work my mine "Tecolota," with a stamp-mill, for I was not able to purchase the same, and transport it to Durango; but I believe that with a ten-stamp mill and heavy machinery, such as said La Abra Company commenced with, and without anything more than the usual difficulties attending such mining operations, and if such company had been permitted to remain and work their said mines, unmolested and without hindrance, they would have realized from their mines a clear profit of at least one million dollars per anhum; and with diligence, and with the full complement of officers and men, they might have realized even larger amounts than I have stated, judging, as I do, from my intimate knowledge of the capacity of said mines, and the richness of their ores. I still claim to be the owner, or part owner, of said mine, "Tecolota," having a half interest in the same, but cannot now, and have not been able to carry on mining operations there since the close of the late revolution, or contest between the so-called "Imperialists" and the Republican, or Legitimate Government, under President Juarez.

Ever since the said war closed, or at least since the latter part of eighteen hundred and sixty-seven (1867,) or early part of eighteen hundred and sixty-eight, (1868,) I could not remain there with safety to person or property; and I am also well satisfied that the superintendent and other officers of said "La Abra Silver Mining Company" could not have remained in said district, as miners; that it would have been impossible for said company to have carried on their said mining operations, beyond the spring of eighteen hundred and sixty-eight, (1868,) when they were compelled to abandon the same; that it would have been hazardous and unsafe to the lives of Mr. Exall, their superintendent, and other officers, and a great risk of any additional capital invested by said company, to have attempted a continuance of said mining operations, owing to the prejudice, jealousy, and hostility of the Mexican authorities to that company, and their expressed determination to "get rid of them in some way," which I know to be the fact as to the then local authorities at San Dimas. The interference of the Mexican authorities, local and national, and citizens, with said American mining operations, by the way of levying illegal demands, issuing illegal and unjust writs of arrest, and otherwise annoying those miners, by making everything difficult in the way of procuring custom-house and other permits for supplies and machinery, which annoyances and outrages were not only perpetrated by said authorities against said La Abra Company, but they were extended to other companies, and individuals working the mines of that district, and, as I am credibly informed and believe, as well in other mining districts of Durango and Sinaloa. These annoyances and hindrances were, in my judgment, evidently designed and perpetrated by said authorities and citizens of Mexico, for the purpose of driving out and compeling the abandonment of said works, and of availing themselves of the great quantities of rich ores already taken out, and the benefit of the large investments made, and outlays of money expended by said "La Abra" company, and other miners, for valuable machinery, and in the work of opening their mines; and also for the purpose of preventing the dissemination of American ideas of government, by association of the peoples of the two nations, as they seemed to fear that such associations would lead to the annexation of Durango, and other border Mexican States, to the United States of America, which latter seemed to be one of the chief causes of their fears, jealousies, and hostilities to said company, and others, composed of citizens of the United States, who were carrying on mining operations there. I know the price paid by said "La Abra Silver Mining Company," for their said mines at Tayoltita. They bought said property, I think, in the early spring of eighteen hundred and sixty-five (1865) to the best of my recollection, but I cannot now state the exact date. Said property contained a number of the richest veins, or lodes of silver ore, intermixed with some gold. They purchased the same

from Don Juan Castillo de Valle, and they paid him fifty thousand dollars, ($50,000,) in gold, for said property.

I had previously been appointed agent of said property, by said Juan Castillo de Valle, and was authorized by him to visit New York, in the latter part of eighteen hundred and sixty-three, (1863,) for the purpose of raising money with which to work said mines, or in case I should fail in that, then to sell a portion of the same for him. I proceeded to New York at about the time stated, I think the last of November or early part of December, eighteen hundred and sixty-three, (1863,) for that purpose, as his agent, and I there became acquainted with some of the present members and directors of the said "La Abra Silver Mining Company," who subsequently purchased said mines of said Don Juan Castillo de Valle, and organized said company under the laws of the State of New York, I think in the summer or fall of eighteen hundred and sixty-five, (1865.) I held said La Abra property, while in New York, at one hundred and fifty thousand dollars, ($150,000,) a very low price for it; but failed to
35 realize money to work said mines, and I also failed to sell the same at New York, which failure I attribute to the then disturbed condition of affairs in the Republic of Mexico. A war was then progressing there between the French or Imperialists, as they were called, and the Liberals or Legitimate forces, under President Juarez, and capitalists of New York said they had but little faith in the stability of the Mexican Government, and feared that their investments in those mines would not be properly protected. I promised them the protection, however, of the Liberal army, and Republican citizens of Mexico; which promises I based upon the liberal proclamations put forth by the agents of the Liberal Government of Mexico, and which were published in California, New York, and other parts of the United States, by order of said Mexican agents, General Gaspar Sanchez Ochoa, Colonel Alfred A. Green, and others; but, I regret to state, that the Mexican authorities did not fulfil the pledges of their agents in that respect. I advised General Thomas J. Bartholow, a wealthy banker of Saint Louis, Missouri, whom I met in New York, and David J. Garth, Esquire, a banker, and now wholesale tobacco dealer of New York, to purchase said La Abra property at Tayoltita, which they did do subsequently, but not until after they had, both of them, visited said mines in person, where they became personally acquainted with said Don Juan Castillo de Valle, at Tayoltita, and they there purchased said property of him and paid him for the same, on behalf and for the use of said company, fifty thousand dollars ($50,000) in gold, as before said.

Before this purchase took place I had already returned home from New York, and my agency for the negotiation or sale of said property had ceased by limitation; and for that reason the property was purchased from Don Juan Castillo de Valle, direct, and I received no commission upon the said sale. Said Don Juan Castillo de Valle had, I know by my own searches of the proper records, a good Mexican title to the said property, and he had good right to sell and dispose of the same. I was not present, and did not witness the purchase, nor the payment of the fifty thousand dollars, ($50,000) for said property, but I know the fact from the statement of the parties to the purchase and sale of the same, at the time, and have heard said Don Juan Castillode Valle acknowledge the receipt of said fifty thousand dollars, ($50,000,) and I know Don Juan Castillo de Valle to be a man of high distinction as a gentleman, and a man of large property, and of truth and strict integrity of character, and I believe his word would not be doubted in Durango or Sinaloa, and especially by good citizens where he is best known.

I was not at Tayoltita, and was absent from my said mine, Tecolota, at the time the superintendent, Exall, and other officers of the said La Abra Silver Mining Company were driven from, and compelled to abandon, the said mines and property of said company, but I know the fact from my own knowledge of corroborative circumstances, and from *common report*, at the time, or soon thereafter, *as well amongst Mexican citizens as Americans*, that they were so driven away by said authorities, *or by their connivance*, and compelled to abandon said mines and property sometime in the early spring of eighteen hundred and sixty-eight, (1868,) I think about the last of March, or early part of April, of that year, and I am also satisfied, from the feelings of said authorities, in San Dimas, and their previously expressed threats in my hearing, and determination to drive out and get rid of said La Abra Company, and others who had made large investment in that district, that it would have been dangerous,
36 if not impossible, for Superintendent Exall, or other American officers of said "La Abra Silver Mining Company," or any other person acting in such capacity, to have gone back and recommenced mining operations at their said mines, at any time since they were compelled to abandon the same, in eighteen hundred and sixty-eight, (1868,) as aforesaid. I spoke and understood the Spanish language,—which is spoken by all the people of Mexico—well. I was not exactly driven from my said mine, for the reason, as I am satisfied, that said Mexicans had very little to gain by my dispossession, as I had no stamp mill or machinery, was working on a small scale, and had very little ore out for them to take, but I left, as aforesaid, be-

cause of said hostile feelings and jealousies toward Americans, as I felt that my life was insecure there.

I am not in any wise interested in the claim for damages of "La Abra Silver Mining Company," against the Republic of Mexico. I have no interest of any kind, direct or contingent, in the claim of said company against the United States of Mexico, to support which my testimony is hereby taken and given, and I am not the agent or attorney of said company, nor of any person having an interest in said claim. I have no feeling or prejudice against any of the authorities or people of the Republic of Mexico, or any part of the same. I was at all times, when residing in Mexico, and during the war for their existence as a nation, true and faithful to the liberal, or legitimate government of President Juarez, and I still adhere to the same cause, and to that Republic.

I have never known or heard of any word spoken, or act committed by said La Abra Silver Mining Company, nor by any member, officer, or employee, of the same, against the people or laws of Mexico, nor in violation of the same, nor in favor of the annexation of any part of Mexico to the United States of America, nor of any word or act prejudicial to the welfare, stability, or integrity of the Republic of Mexico.

I have been asked by the attorney of said company, to make an estimate, to the best of my judgment, of the damages said company should sustain against the Republic of Mexico, occasioned by the occurrences of eighteen hundred and sixty-seven (1867) and eighteen hundred and sixty-eight, (1868,) as enumerated above, but I cannot undertake, properly, to estimate said damages, even approximately, for the reason that I do not know the amount of money said company have expended for stamp-mill and machinery, necessary to its proper adjustment for work upon the ground at Tayoltita, buildings, mill runs, and other heavy works which were done there by said company, and also for opening said mines and extracting their ores, which were taken out in large quantities and abandoned as aforesaid, but their damages must be heavy, and ought, in my judgment, to be sustained for the full amount of their expenditures and losses, direct and consequential, by reason of acts of said authorities.

This is my own written statement of the facts, as far as I now recollect them, uninfluenced by any other consideration than that of justice to the parties concerned.

And further this deponent sayeth not.

(Signed) WILLIAM HENRY SMITH.

Subscribed and sworn to before me, this twenty-fourth day of January, A. D. 1870.

(Signed) GEO. E. WHITNEY,

[SEAL.] *Clerk and Com. of the U. S. Circuit Court, for the District of California.*

37 UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, George E. Whitney, commissioner of the United States circuit court, for the ninth circuit and district of California, and clerk of the same, do hereby certify that William H. Smith, whose deposition is hereinabove written, attended before me on this, the twenty-fourth day of January, A. D. eighteen hundred and seventy, (1870,) at the United States circuit court rooms, in the city and county of San Francisco, and was publicly and duly sworn by me in accordance with the laws of the United States of America, and the State of California, to tell the truth, the whole truth, and nothing but the truth, in the above-entitled matter, and thereupon he deposed and testified as hereinbefore set forth; that said deposition was carefully read to said William H. Smith by me, and that he thereafter signed the same in my presence.

I do further certify that said deposition was taken by me, in the city and county of San Francisco, in the State of California, in the United States of America; that I am competent to take depositions by the laws of said State and of the United States; that I have no interest in the claim to which the testimony of said William H. Smith in said deposition relates; and that I am not the agent or attorney of said company nor of any person having such interest.

I do further certify that said deposition was reduced to writing by Hillary T. Burrows in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify that I know the said William H. Smith, the above-named affiant, as a man of good character for truth and veracity, and I hereby certify to the credibility of said William H. Smith, and that his deposition is entitled to full faith and credit.

Witness my hand and seal of said U. S. circuit court, at San Francisco, in the district of California, this 24th day of January, A. D., 1870.

(Signed) GEO. E. WHITNEY,

[SEAL.] *Clerk and Com. of the U. S. Circuit Court, for the District of California.*

In the matter of the Claim for Damages of "La Abra Silver Mining Company" against The United States of Mexico.

Doc. No. 12.

Deposition of George C. Bissell for claimants.

U. S. CIRCUIT COURT ROOM, DISTRICT OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO,
3 o'clock P. M., March 11, 1870, *ss:*

Personally appeared before me, George E. Whitney, clerk and commissioner of the United States circuit court for the District of California, George C. Bissell, a witness on the part and behalf of "La Abra Silver Mining Company," the claimants in the above-entitled cause, and having been first duly sworn by me according to law, deposes and makes oath to the following statement, in answer to interrogations by me, in relation thereto, as follows, to wit:

My name is George C. Bissell; I am forty years of age; I was born in Wellingford, New Haven county, State of Connecticut, in the United States of America; I am a miner by occupation; I am a citizen of the United States of America; my tem-
38 porary residence is in the district of San Dimas, in the State of Durango, in the Republic of Mexico. I have had my residence there for the last two years, and was occupied in mining silver ore there, although I have not been in that business or district constantly during that time.

My permanent residence is, and has been for the last eighteen years, in San Francisco, California.

I know well the mines and mining property belonging to said "La Abra Silver Mining Company," organized under the laws of the State of New York, I think, in the summer of 1865; said mines and property were situated at Tayoltita, in the mining district of San Dimas, in the State of Durango, in the Republic of Mexico.

The mines of said company embrace eight veins or "lodes," under different names—"La Abra," "La Luz," "Rosaria," "Tapia," and "Cristo"—are the most prominent, but they were all owned by, and under the works and name of "La Abra Silver Mining Company," aforesaid.

Said company had a ten-stamp mill, and very heavy machinery for the same, upon the ground at Tayoltita, on the Piastla river, or a tributary of the Guaryisemay river, a short distance from said veins or mines.

I was engaged in mining, very near to said "La Abra Silver Mining Company's" works, in the same district. They had heavier works for mining, and larger machinery there, than any in that district, and deponent thinks their machinery and the expense of mining operations, and buildings for the same, are larger, and cost more money, than any other in the State of Durango.

Said "La Abra Company" were broken up there by the bad acts of Mexican authorities, some time in the spring of 1868, in March, or the early part of April, of that year; but deponent was not there at the time, and knows the cause of their being broken up, by the statements of said Mexican authorities at San Dimas, and by Mexican and American citizens, and also by common report soon thereafter.

Deponent has been informed by the most reliable authority, by men whose word or statements are not to be denied or controverted, that said company were interfered with, annoyed, and finally broken up, by the San Dimas and other authorities of Mexico, and by the troops of the Republic, under President Juarez; that they had their trains of pack mules captured by said troops, and the provisions, mules, and supplies, converted to the use of said army; and that on one occasion of said captures, one of the men in charge of the train of pack mules was killed, in order that they might possess themselves of said property for the army.

Deponent was so informed by Macario Olvera, in the fall of 1868, or early in the winter of 1869.

Said Olvera was "prefect" of said mining district of San Dimas at the time he told deponent so.

He was holding a high official position there at the time, and exerted great influence in that district over the people, and over other authorities there.

A prefect in Mexico is high authority, as he exercises both civil and military power in the district.

Deponent, as before said, did not see these last-named acts, but believes them to be true, from the said statement of the said prefect, and also from corroborative circumstances known to deponent, and also from the high character of some of the parties from whom he has received his information of the facts stated.

39 Mr. John Cole of Camacho, a man of large wealth and of good character, and Charles H. Exall, the last superintendent of said La Abra Silver Mining Company, are two of deponent's informants as to the particulars stated, also some Mexicans there; and any statements made by either John Cole or Charles H. Exall are

reliable, and any man who enjoys their acquaintance would believe anything they, or either of them, might state as a fact.

Deponent further says: "I regard said La Abra Company's mines and other property as one of the very best, and most valuable in the State of Durango; that I have heard, and know by the statements of all parties in and about San Dimas district, that the richest ores belonging to said company, which they had taken out in large quantities at the time they were compelled to abandon the same, had been carried off and sold by Mexicans, and the profits of the same shared by Mexican authorities, by whom those acts were covertly instigated."

Deponent further says: "I know Charles H. Exall, said superintendent of La Abra Company, very well and intimately, and have heard from said Exall his statement as to his expulsion from said company's mines, and I believe the same to be true in every particular, from the character of said Exall as a gentleman of truth, and also corroborative statements from others in that district, at and since the time, as aforesaid, and from other facts known to this deponent.

"The said company must have sustained heavy damages by reason of said forced abandonment, but how much, and to what extent, I do not know, and will not attempt to estimate the same, as I have never had access to the company's books, and do not know all the expenditures and liabilities of said company. I know their damages must have been very large, however—larger than that of any silver mining company in that part of Mexico."

This deponent further says: "It was a common report by Mexicans, whose language I understood and spoke well, that said company were in favor of the annexation of Durango and Sinaloa to the United States of America, and that those reports are still kept up, to which may be attributed a part of the hatred and prejudice of said authorities, which I know did, and does still exist against said Abra Silver Mining Company, and its superintendents; but I never knew, or heard from any good authority, that said Exall, or any employé or member of said company, ever interfered in political affairs while in Mexico, or ever disobeyed any of the laws thereof, and I believe such prejudice, by said authorities, not well founded, but that it was encouraged by selfishness and the hope of gain by said Mexican authorities, if not absolutely instigated by them, which latter fact, from circumstances known to me, corroborative of the same, I believe to be true of said authorities.

I have lived in California and in different parts of Mexico for about eighteen years, and I speak and understand the Spanish language, and have so spoken and understood the same for more than fifteen years last past.

I am perfectly satisfied that neither said company, nor any officer acting for them, could have ever returned and recommenced said mining operations, with safety to life or capital, since said company were expelled, or forced by the acts aforesaid to abandon the same, in the spring of 1868, nor would it be safe now for said company to attempt to repossess themselves of their said mines and property.

I know the fact that the said prefect of San Dimas, Macario Olvera, was married to, and lived with the daughter of one Guadalupe Soto, who had a lawsuit with said La Abra Silver Mining Company about the title of one of the haciendas belonging to said "La Abra Company's" mining property at Tayoltita, and that said company gained the suit, and that said Guadalupe Soto was known as a bitter enemy to said company, and I am satisfied that said prefect of San Dimas shared the feelings of hatred and prejudice by said Guadalupe Soto and family, of which said prefect became a member by marriage, and with whom, is is said, he had for a long time been upon the most intimate terms. I am also satisfied that other Mexican authorities, both local and national, were influenced by said prefect, and it had been determined by said Mexican authorities, *at all hazards*, to get rid of said company, in some way, and not to permit them ever again to work their said mines.

I have no interest, direct, contingent, or otherwise, in the claim of said "Abra Silver Mining Company" against the Republic of Mexico, to support which my testimony is here taken, and I am not the agent or attorney of said company, nor of any person having such interest; and upon the happening of no event would I be entitled to any part of the sum which may be awarded said company by the Commissioners.

And further deponent saith not.

(Signed) G. C. BISSELL.

Subscribed and sworn to before me this eleventh day of March, A. D. 1870.

(Signed) GEORGE E. WHITNEY,
Clerk and Commissioner of the U. S. Circuit Court, District of California.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, George E. Whitney, Commissioner of the United States Circuit Court, for the Ninth Circuit and District of California, and Clerk of the same, do hereby certify

that George C. Bissell, whose deposition is hereinabove written, attended before me on this the eleventh day of March, A. D. (1870) eighteen hundred and seventy, at the United States Circuit Court rooms, in the city and county of San Francisco, and was publicly and duly sworn by me in accordance with the laws of the United States of America, and the State of California, to tell the truth, the whole truth, and nothing but the truth, in the above entitled matter; and thereupon he deposed and testified as hereinbefore set forth; that said deposition was carefully read to said George C. Bissell, by me, and that he thereafter signed the same in my presence.

I do further certify that said deposition was taken by me in the city and county of San Francisco, in the State of California, in the United States of America; that I am competent to take depositions, by the laws of said State, and of the United States; that I have no interest in the claim to which the testimony of said George C. Bissell in said deposition relates, and that I am not the agent or attorney of said "La Abra Silver Mining Company," claimants in the above entitled cause, nor of any person having such interest.

I do further certify, that said deposition was reduced to writing by Richard T. Hill, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify that I know the said George C. Bissell, the above-
41 named affiant, as a man of good character for truth and veracity, and I hereby certify to the credibility of said George C. Bissell, and that his deposition is entitled to full faith and credit.

In witness whereof, I, George E. Whitney, Clerk and Commissioner of the United States Circuit Court, District of California, have hereunto set my hand and seal of said Circuit Court, at San Francisco, in said District of California, this eleventh day of March, A. D. 1870.

[SEAL.] (Signed) GEORGE E. WHITNEY,
Clerk and Commissioner of the United States Circuit Court, District of California.

Doc. No. 26.

In the matter of the Claim of La Abra Silver Mining Company against the Republic of Mexico. Deposition of James Granger in behalf of claimants. To be submitted to the Joint Commission of the United States of America and the United States of Mexico appointed under the Convention of July 4th, 1868. In session at Washington, D. C.

CONSULATE OF UNITED STATES,
State of Sinaloa, Republic of Mexico, ss:

Personally appeared before me, Isaac Sisson, United States commercial agent, in and for the port of Mazatlan and its dependencies, James Granger, who is personally well known to me, and after having been by me duly sworn according to law, deposes and testifies, in answer to the following questions submitted to him by me, as follows:

Question No. 1. What is your name, age, birth-place, citizenship, and occupation; and where do you now reside, and where did you reside, and what was your occupation from about the 20th of October, 1866, up to the 20th of March, 1868?

Ans. My name is James Granger; I am forty-two years of age; I was born in Scotland, in the kingdom of Great Britain, and I am still a citizen of the same; I now reside in San Dimas, in the State of Durango, in the Republic of Mexico; my profession is that of a miner, but I am now acting as bookkeeper for Ralf Martin, of San Dimas; from October, 1866, to the 20th of March, 1868, I resided at Tayoltita, in the said mining district of San Dimas; my occupation was, then, that of a professional miner; from April, 1867, until March, 1868, I was employed as one of the clerks and assistant superintendent of "La Abra Silver Mining Company," a large stock company of American citizens, then doing business at said Tayoltita.

Ques. No. 2. State the names of the mines belonging to "La Abra Silver Mining Company," of which you were assistant superintendent, the character of said mines, as to richness of their ores, and the quantity or supply of the same; state all you know in relation thereto.

Ans. The names of the mines owned by that company, were "La Abra," "El Cristo," "La Luz," "Animas," "Bartholow," "Aryan," "Sanz," "El Rosario," "San Felipe," "San Antonio," and "Talpa." These mines are all well known, and spoken of as exceedingly valuable mines, and their ores rich in silver, and abundant in supply. Some of them are historical and in the working of them, former owners have realized immense fortunes, and it is pretty well understood by *professional* miners who have investigated these mines, that the richest of their "lodes," or veins, have yet not been reached, for the want of the necessary expenditures in opening them up, by "tunnel-

ing." Such expenditures are particularly needed in opening "La Abra," and "El Rosario," by tunnels.

42 These two mines have turned out ores that "beneficiated" ten to fifteen marks to the carga, and selected pieces much more, to my knowledge, as *I have tested them myself*, and I believe, if properly tunneled, would yield enormous profits to their owners. The supply of all those mines of "La Abra Company" is, I believe, almost inexhaustible. It is the most valuable property I know of in that district, including all their machinery and improvements.

Question No. 3. Is "La Abra Silver Mining Company," or its officers still there, and yet carrying on their mining operations at Tayoltita?

Ans. No, sir; they have left Tayoltita, and that company is doing nothing there now. They have quit and left the district, and ceased mining operations there altogether.

Question No. 4. When, and in what way did said company quit and cease its mining operations at Tayoltita, and what has become of said company?

Ans. That company was broken up, and compelled to abandon said mines and mining operations at Tayoltita, in March, 1868, and I can not tell you what has become of the company. I believe they are broken up, and their interests destroyed as a mining company; at all events, they abandoned all their mines, provisions, supplies, machinery, buildings, and all other property there in March, 1868.

Ques. No. 5. Why did said "La Abra Silver Mining Company" quit work upon their said mines, and abandon all their works and property at Tayoltita, as stated by you? Answer in a concise manner, and state all you know in relation thereto, giving facts, dates, names and circumstances, so far as you can now recollect them; and state also if you spoke and understood the Spanish language, while in the employ of said company, or could read or write the same.

Ans. I spoke and understood, well, the Spanish language, and I also wrote and read the same while with said company, without difficulty, as I had done for some years, and do now. The said La Abra Silver Mining Company abandoned their mines, hacienda, stamp mill, and reduction works, in March, 1868. I do not recollect the exact day, and they were forced to abandon said mines, and works, from the interference, hindrances, annoyances, and obstructions they had met with in the prosecution of their mining operations, both in the getting up of the machinery and supplies, on the road, by the military of the Republic, and from the various local authorities, which were such as must have convinced them that they never would be able to carry on their mining operations, with any chance of success. I shall proceed to state on what facts I found this statement:

In the latter part of 1865, and in 1866, when they were getting up their machinery and supplies from Mazatlan, it was a matter of public notoriety that they were hindered and delayed by the military authorities of Mexico, and they were subjected by said authorities to "forced loans" or prestamos, and illegal exactions upon said machinery and supplies; one of the captains, or quartermasters of one of the trains of the company, whose name was Scott, commonly called "Scottie," was robbed by the military of the liberal army, on the road from Mazatlan, and while near Camacho; said Scott was in charge of three thousand dollars of the company's money, and said military took from him and converted the same to their own use, eleven hundred and seventy-eight dollars ($1,178,) and I know that the same has never been returned to said company. Another, by the name of Grove, was foully murdered, I think

43 about the same time. This took place at a point called "Candelero Crick," between San Ignacio and San Dimas.

Said company was also forced to pay "prestamos." A letter was received by Colonel de Lagñel, superintendent of said company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed "Jesus Valdespino," which came into my possession as clerk of the company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked "Exhibit Z." This letter demands twelve hundred dollars ($1,200) from said company for the support of his forces, under his command. It is needless to say the demand was complied with. In June or July, 1867, the "gefe politico" of San Dimas, Marcos Mora, came out to Tayoltita, and he summoned the superintendent of said company, Charles H. Exall, to come before him. I accompanied Superintendent Exall before the gefe, and I heard all the conversation that took place on the occasion. The said gefe, Marcos Mora, seemed much excited, and prejudiced against the company. He told Superintendent Exall that he must "work the mines of the company as he directed them to be worked," and to "work all their mines," or he would "take the mines of the company from them and give them to the people to work on their own account." A large number of the workmen of said La Abra Company, and other Mexicans, were sitting in the portal of the house of Guadalupe Soto, then the local judge there, or "juez," (conciliador,) where the gefe politico had called our superindendent, Mr. Exall, and where this interview was held; and he, the gefe, ordered the doors to be opened, so that the crowd outside might hear him, (of course,)

and in a loud voice, that could be heard by all the people outside, he said that he, Superintendent Exall, should work the mines of the company as he, the gefe politico, had directed, or he would take their mines from them, and give them to the people to work as they pleased, and that he, the gefe, "would not be responsible for any consequences that might result therefrom." He, at the same time, forbid any of the workmen there from working for said company. This created tremendous enthusiasm and excitement with the workmen, and I felt that the result of this talk, which was calculated, if not actually intended, to incite the people to riot and bloodshed, might be the destruction of the company's interests, if not the expulsion of their American employees. I remember particularly the case of a man, whose name was Aquilino Calderon, who, being very anxious to work, had gone up to the mine "El Cristo," and while there employed, three armed men were sent by said gefe, Mora, after him, and he was brought by them before said gefe, who commanded him to work no longer for that company, and warned him that if he again attempted to work for the company he should be arrested and sent to the common jail at San Dimas; and I understand that other men were so threatened in the same way by said prefect.

In the month of December, 1867, or January, 1868, the superintendent, Charles H. Exall, was arrested and imprisoned by the "juez conciliador" of Tayoltita, Nicanor Perez, on a mere pretext, without any reasonable cause whatever. The particulars are as follows: Mr. Exall was occupied in a private room, and in private conversation, and while so engaged, said juez, or judge, Perez, entered the store at the hacienda, and without speaking or asking permission, he passed into a private storeroom adjoining, and Mr. Exall, observing this, stepped to the door of said storeroom,
44 and in a polite manner addressed said Perez, saying that no one was allowed to enter said storerooms without license, and if he had any business to please communicate the same to him. Said Perez came out of said storeroom in a great rage, and asked Mr. Exall if he thought he, Perez, was a thief, or wanted to steal anything. Mr. Exall denied any such idea, and stated that, in requesting him to leave the private storeroom, he was merely carrying out the general rules of the company.

Said Perez would listen to no explanations, and when he went out remarked that he, Exall, should hear from him. About half an hour after, an order came to the hacienda for Mr. Exall to attend, forthwith, before the said juez, or judge, Perez, which order Mr. Exall obeyed, and upon entering said court-room, said Judge Perez commenced a tirade of the most infamous personal abuse of said Exall, without allowing explanation or justification, sentenced said Exall to pay a fine of, I think, about fifty dollars, and imprisonment for two months. Exall was confined in the hacienda until the next morning, when he was sent for by said "juez," who did lock up said Exall in an old empty house, with the declared intention of sending him to San Dimas to complete his sentence. Said judge remarked, at the same time, that he could not permit Exall to ride even his own mule to San Dimas; that he should treat him the same as he would treat any common prisoner.

When I went to visit said Exall in his prison, the next morning, I found him busily engaged in killing fleas that were troubling him. It was a filthy place. By personal influences I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Mr. Exall released. All the above I witnessed myself. A few weeks after this occurrence, on a Saturday, the superintendent, Exall, received from said Judge Perez an order directing him to attend at his "juez-gado," (court-room,) and the same evening, at seven (7) o'clock, Mr. Exall, in obedience to said order, went to the court-room, where he found assembled a large number of the employees of La Abra Company's mines, and others, and in their presence the said judge proceeded to lecture said Exall upon the manner in which the business of said company should be carried on, and he threatened that if the superintendent or company did not work in the mode and manner to please the authorities they should be deprived of their property, and forced to flee the country; all of which was said in my hearing, and although I have only stated a few circumstances that came under my direct observation, showing the animus of the authorities and people of this district, these are not by any means to be taken as all that took place, nor even as the most vexations. It was the daily, and almost hourly annoyances and interruptions. Every pretext that could, by any means, be made the basis of a suit or exaction was availed of.

The rich mines, and the large expenditures of this La Abra Company, seemed to have excited the cupidity of the authorities, and they determined to get rid of this company, and to drive them out of the country. I have heard this determination expressed by the "Gefe Politico" of the district, officiating as such at the time, and also by different judges in the district of San Dimas. The universal sentiment of all the Mexican people and authorities there was, that all the mines of the country should be worked and owned only by the natives of the country. As I have said before, this was expressed in my presence and hearing, by Judge Nicanor Perez, and also by another judge at Tayoltita, whose name is Guadalupe Soto, and also by
45 the gefe politico of the district. I am satisfied that said superintendent, Exall,

could not have continued the mining operations of this company any longer than he did, with any hope of security or protection to life, or the property of the company, and that they could not have returned and worked their said mines, since that time, with any hope of such security or protection, judging, as I do, from the past, and my knowledge of the feelings there on the part of said authorities.

Before I entered the service of the company as assistant superintendent and clerk, I heard of a large train of mules, laden with supplies for the company, having been captured by the military authorities of the Republic, and of the disappearance and supposed murder of one of the quartermasters, or captain in charge of the train; and also of "prestamos" levied on other trains of the company, loaded with supplies for the employees at Tayoltita; but of the prestamos upon the mule trains, I have no personal knowledge, but they were matters of general and universal report and belief at the time, and I believe them to be unquestionably true.

I also know that an armed mob of some forty or fifty men, charged on the hacienda of La Abra Company, at Tayoltita, with the expressed intention of killing all the American employees of the company, which mob, it was believed by all of the Americans there at the time, had been incited at the instigation and by the connivance of the authorities, which, I understood, was afterwards ascertained by the company to be the fact.

Another American company in this neighborhood, at Candelero creek, were attacked by an arm mob of Mexicans, two of their officers killed, and others wounded, and the company forced to abandon their property and mines.

Question number six. Would you know and recognize the official signature and handwriting of said Gefe Politico, and Juez Conciliador, Marcos Mora and Guadalupe Soto, if you were to see them?

Ans. Yes, sir.

Question number seven. (Consul Sisson hands to witness the order, purporting to be from the Gefe Politico of San Dimas, dated July 10th, 1867, and marked "Exhibit X," the seal of the consulate attached.) In whose handwriting is this paper, and signature to the same?

Ans. It is the handwriting, body and signature, of Marcos Mora, who was Gefe Politico of the district of San Dimas at the time that order was given. I remember the order very well, as I received it as clerk of the company, and after showing it to the superintendent, Mr. Exall, I filed it away with some other papers of the kind, and subsequently turned it over, together with two or three others from Judge Guadalupe Soto, to the attorney of said La Abra Company.

Question number eight. (The consul hands to witness a paper purporting to be an order from Marcos Mora, dated June 3d, 1867, and marked "Exhibit Y," with the seal of the consulate of Mazatlan attached.) Whose order is this, and in whose handwriting is it written and signed?

Ans. It is a copy of an original order issued by said Gefe Politico, Marcos Mora, and received by Judge Guadalupe Soto, on the 3d day of June, 1867, and by him exhibited to said superintendent, Exall, and myself, and this copy, by request, we were allowed to take from the original. This copy is in the handwriting of Diego Flores, then in the employ of said La Abra Company, at Tayoltita.

I know it to be a true and correct copy of the original, signed by said Marcos
46 Mora, who was at that time the Prefect, or Gefe Politico of the said district of "San Dimas."

Question number nine. (Handing to witness two papers, purporting to be orders to said company from Judge Guadalupe Soto, at Tayoltita, and dated respectively, 4th and 24th of July, 1867, with the consular seal of the United States for Mazatlan, attached.) Whose orders are these, and in whose handwriting are they written and signed?

Ans. They are orders issued by Guadalupe Soto, who was the juez conciliador, or local judge, of Tayoltita at that time; both body and signature are in the handwriting of said Guadalupe Soto.

Question number ten. What amount, or quantity of silver ores were taken out and abandoned by said company, in March, 1868, and what has become of said ores? State all you know bearing upon that subject.

Ans. I think about seven thousand cargas, or what Americans would call a little over one thousand tons, all the richest and best of which has long since been picked out and carried away, *i. e.*, stolen by Mexicans.

Even while Superintendent Exall was still there trying to carry on the works of the company, this tearing down of the ores of the company, where it was piled up, within the enclosures of the hacienda, and the culling out of the richest pieces, and stealing and packing away the same by Mexicans, in sacks, was going on almost every night, and sometimes in open daylight, and that too with impunity and defiance, and Superintendent Exall did not dare even to go out or attempt a defence of the same, as it probably would have cost him his life to do so, for it seemed to be well understood by Mexican workmen in Tayoltita, that those acts were "winked at," if

not actually instigated, by the authorities, both of the District and "Cuartel," or Pueblo; and it may not be out of place to state, in this connection, that Macario Olvera, the Gefe Politico of said District of San Dimas at the time the company were driven out and abandoned their said works, was an intimate friend of Judge Guadalupe Soto, and exceedingly intimate with his family.

Marcario Olvera succeeded Marcos Mora in the office of Gefe Politico, (Prefect) a few months before said abandonment by the company.

Question number eleven. What was the character of works put up at Tayoltita by said company, and what preparation had been made for mining and reducing ores by that company, and what was the cost of the same?

Ans. They had brought to Tayoltita, from San Francisco, California, a large and first class ten-stamp mill, with all the machinery pertaining thereto for the reduction of silver ores, which stamp-mill and machinery had been erected and set up in a large and expensive mill-house, built for the same, together with mill races, mill dam, and ditch, a large and fine hacienda, store-houses, blacksmith-shop, and other necessary outbuildings. In fact, they had completed, at the time they were forced to leave there, everything that could be required for carrying on silver mining, and the reduction of silver ores, upon an extensive scale, all at an expense of about three hundred thousand dollars, ($300,000,) or a little more perhaps. I cannot, without access to the books of the company, in New York, state the exact amount of money paid out by the company, as the hacienda has long since been sacked of books, receipts, invoices, and other papers, furnishing the necessary data upon which to make anything like an exact statement on the subject.

47 Question number twelve. What is the power and authority of a Prefect, or Gefe Politico, in this country?

Ans. He is the chief power in his district—civil and military. I may almost say that he has absolute power, for experience in Mexico has long since taught me that no man, in any district, dares to oppose the will of the Prefect.

Question number thirteen. Were any of the authorities, local or national, civil or military, in the mining regions of Mexico, and especially in San Dimas district, in favor of extending protection or security to American companies engaged in working said mines, so far as you know?

Ans. No, sir; they are bitterly opposed to it; as I have before said, they are all in favor of seeing the mines of Mexico in the hands of, and worked by Mexicans. I have heard that the two Prefects of San Demas, that I have named, Marcos Mora and Marcario Olvera, say so, while they were officiating as Prefects there, and I have often heard Judge Guadalupe Soto, of Tayoltita, say so. The last named authority I have heard say much more on the subject, as applied to "La Abra Silver Mining Company." The fear of annexation to the United States of America, seems to influence or increase their prejudices in this respect. I know that the prejudice of Mexican authorities against "La Abra Silver Mining Company," in this respect, was exceedingly unjust, and without foundation in fact—in any conceivable respect—for no member or officer of that company ever interfered in any way, directly or indirectly, in the politics of this country, or even talked of annexation, so long as I was with them, or so far as I could learn from any quarter; they were all peaceable, law-abiding men.

Question number fourteen. You speak of having heard Judge Guadalupe Soto say something more than you have stated, on the subject of having the mines of Mexico owned and worked by Mexicans, as applied to La Abra Silver Mining Company; what more than you have related has been said by Guadalupe Soto, in relation thereto, and in your hearing?

Ans. I have heard the said Guadalupe Soto say that he was opposed to seeing the mines of Mexico in possession of Americans, and that while he was friendly with General Thomas J. Bartholow, the first superintendent, and liked him very much, *personally*, he was opposed to La Abra Silver Mining Company, and not in favor of their ever being permitted to return and recommence mining operations in that district. That he would go for clearing them out, if they attempted to return to work their said mines at Tayoltita. I know that this was, and is now, the feeling there with higher Mexican authorities than Guadalupe Soto, in that district.

Question number fifteen. Did said Guadalupe Soto have a law suit with La Abra Silver Mining Company, about the title to property in that district?

Ans. Yes. It was about the "Lower Hacienda," as it was called, which was a part of La Abra property, the same having been denounced by said Soto, as abandoned, while the company was still at Tayoltita, carrying on their mining operations through superintendent Exall. This, I think, was about January, 1868, or a couple of months before they were compelled to leave. The case was tried at San Dimas, and although it was a case not requiring much knowledge of the law to determine, still the company could get no decision in San Dimas, but the papers were sent up to Durango, the capital, and, as I understand, decided in favor of the company, but it was a mat-

48 ter of little consequence to the company, as they were soon after driven away and compelled to leave there altogether.

Question number sixteen. Who now occupies the said "Lower Hacienda," and who occupies the principal hacienda and buildings of said La Abra Company at Tayaltita?

Ans. The said juez, or Gefe de Cuartel, Guadalupe Soto, and his family. I think the office held by Guadalupe Soto is, now, "Gefe de Cuartel." I was at Tayoltita, but a few days ago, and I think he then told me so at said hacienda. I know he still holds office there, and executes the orders of the Gefe Politico.

Question number seventeen. In your judgment, what sum of money would cover the losses and injuries of said La Abra Company, direct and consequential, by reason of the acts of said Mexican authorities?

Ans. I cannot state the sum; I have never formed a judgment, or made a calculation of the amount they are entitled to; but it is my judgment that the company are entitled to at least the amount of all their expenditures, and the value of the property left and abandoned, together with such an allowance for consequences as resulted to said company, from the breaking up of the, otherwise, promising enterprise. I have no idea of the extent of their damages, direct and consequential.

Question number eighteen. Have you any interest direct, contingent, or otherwise, in the claim for damages of said La Abra Silver Mining Company against the Republic of Mexico, to support which your deposition is here taken; or are you the agent, or attorney of said company, or for any person having such interest?

Ans. No, sir. I have no interest in the claim, of any nature whatever, direct or contingent, and I am neither agent or attorney for the company, nor for any person having such interest.

(Signed,) JAMES GRANGER.

Sworn and subscribed before me, this 14th day of May, A. D. 1870.

(Signed,) ISAAC SISSON,
[Consular Seal.] *U. S. Comm'l Agent.*

(Here follows certificate of United States commercial agent at Mazatlan, to the due taking of this deposition, and to the credibility and high respectability of Mr. Granger, the above-named witness.)

[Consular Seal.]

Doc. No. 18.

In the matter of the claim for damages of La Abra Silver Mining Company against The Republic of Mexico. Deposition of Matias Avalos on behalf of Claimants: To be submitted to the Joint Commission of the United States of America and the Republic of Mexico, acting under the Convention of the fourth of July, A. D. one thousand eight hundred and sixty-eight, in session at Washington, D. C.

CONSULATE OF THE UNITED STATES, PORT OF MAZATLAN,
State of Sinaloa, Republic of Mexico, ss:

On this twenty-third day of May, A. D. one thousand eight hundred and seventy, before me, Isaac Sisson, commercial agent, with consular powers, of the United States of America, in and for the port of Mazatlan and its dependencies, personally appeared Matias Avalos, a witness introduced by and in behalf of the claimants in the above-entitled matter, who, after being by me duly sworn according to law to say the truth, the whole truth, and nothing but the truth, through the interpreter and translator, C. F. Galun, for that purpose by me duly sworn, in answer to the following questions, submitted to him by me, and translated by the interpreter, deposeth and answereth as follows, to wit:

49

Question No. 1. What is your name, age, birthplace, residence, and occupation, and where did you reside, and what was your occupation from about August, eighteen hundred and sixty-five, up to about March the twentieth, eighteen hundred and sixty-eight?

Answer. My name is Matias Avalos; I am thirty-five years of age; I was born near Tepic, state of Jalisco, in the republic of Mexico; I reside in San Dimas, state of Durango, Mexico; I am (correo) mail-carrier; from August, eighteen hundred and sixty-five, up to March the twentieth, eighteen hundred and sixty-eight, I resided at Tayoltita, in said district of San Dimas, and my occupation was that of "arriero" (packer) for La Abra Silver Mining Company, whose mines and mining works and hacienda are at and near Tayoltita.

Question No. 2. Do you recollect of any difficulties or disturbances that said La Abra Silver Mining Company met with in the progress of their mining operations in said district, or of any obstructions, interferences, or molestations to said company?

Ans. Yes, sir

Question No. 3. What was the nature of said disturbances or molestations; by whom were they made, and who were responsible for the difficulties and obstructions that

said company met with in the progress of their said mining operations at Tayoltita, so far as you know?

Ans. I was present at the hacienda of the said company, one night—I think in the latter part of eighteen hundred and sixty-six—when an armed mob of Mexicans charged upon the hacienda of the company, and the Americans there were badly frightened, and retreated back of the hacienda, and armed themselves for defence. I was inside with them. The Mexicans, as I afterwards found out, thought the Americans too well prepared to meet them, and did not follow up the charge at the time.

At another time, I think in the month of July, 1867, when I was engaged in bringing down from the mines to the hacienda the ores belonging to La Abra Company, I met all the Barreteros, and men employed in and about the mines, going down to the hacienda, and the Barreteros and all the other men stopped and talked with me, and they all said an order had been sent up to the mines by Marcos Mora, gefe politico of that district, to stop work, and ordering them all to Tayoltita. When I came down to the town, in the evening, the gefe was at the house of Guadalupe Soto, and I heard the gefe, Marcos Mora, tell these men, a very large crowd of them, that the company did not work as he, the gefe, wanted them to work, and employ all the men who were out of work at Tayoltita, and that he would not let any of them work if they did not employ all of them, and work all of their mines at the same time, as he had directed them to work; and he said, at the same time, that he was going to take the mines away from the company, and give them to all of the people, to work them as they pleased; and that night, I remember well, I did not sleep at all, for the words used by the gefe politico to the crowd of miners were well intended, and had the effect to incite the Mexican miners and men out of employment to riot, and perhaps to something much worse than that, and I expected serious trouble that night for the company. I do not know how the company settled the matter, or how it was that

50 "La Abra Company" stayed in the district as long as they did after that affair, for I knew the authorities were determined to get rid of them, from all I could hear whispered about by Mexicans out of employment, who seemed to be in with the gefe and juez in getting the company out. I know these troubles went on from time to time, until the spring of the year 1868, when the superintendent, Exall, abandoned all the mines and the hacienda, and metals, and stamp-mill and everything they had there, and the company has never been there, or done any work in San Dimas district since that time. I have heard about the prestamos on the company, and of the capture and pressing of mule trains, and I heard of the taking of money of the company from a Scottie, or Scott, on the road, and of the murder and loss of two captains of the company's mule trains, but I do not know of these things myself, as I did not see them. I heard Scottie say that the military had taken the company's money from him. He told me that when he first came back from Mazatlan, after he had been robbed.

Question No. 4. Who occupies La Abra Company's hacienda, and property at Tayoltita, now?

Ans. Guadalupe Soto and his family.

Question No. 5. What position did this same Guadalupe Soto hold, if any, in the spring and summer of 1867?

Ans. Juez conciliador (conciliation judge) at Tayoltita.

Question No. 6. Have you heard said Guadalupe Soto, or any other of the authorities there than the one you have named, say anything about driving away the company, or of taking their mines and property from them? State all you know in relation thereto.

Ans. No. I do not know that I have heard Guadalupe Soto say so, but I have heard Nicanor Perez, juez conciliador, say he would drive the company out of Tayoltita, and out of the country, and also Andres Serrano, who held the same office after Perez went out. They both said they would get rid of La Abra Company, and have their mines and property for the Mexicans, who were out of employment. They said these mines are too good for "Gringos," they can't keep them or take away their ores.

Question No. 7. Have you any interest, direct, contingent, or otherwise, in the claim of "La Abra Silver Mining Company," against the Republic of Mexico; or are you the agent or attorney of said company, or for any person having such interest?

Ans. No, sir; nothing of the kind. I have no such interest, of any kind, and have no business with any person who has.

his
MATIAS ⋈ AVALOS.
mark.

Witnesses: (Signed,) C. F. GALAN,
(Signed,) JAMES GRANGER.

Sworn to and subscribed before me, this twenty-third day of May, A. D. one thousand eight hundred and seventy, at eight o'clock P. M.

(Signed,) ISAAC SISSON,
[SEAL.] *U. S. Com'l Agent.*

CONSULATE OF THE UNITED STATES,
Port of Mazatlan, State of Sinaloa, Republic of Mexico, ss:

Carlos F. Galan, being duly sworn, deposes and says:

I was born in Spain, and now reside in Oro street, Mazatlan; I am, by pro-
51 fession and occupation, attorney and counsellor-at-law, printer and publisher of a newspaper, called the "Occidental," published at Mazatlan, and also an interpreter and translator of the Spanish and English languages. I was called upon by the aforesaid witness, Matias Avalos, and by Isaac Sisson, Esq., commercial agent of the United States, in and for this port of Mazatlan, to act as his official interpreter and translator, in taking the aforesaid deposition, and that the answers contained therein are the true, correct, and literal translation of the answers made by the witness, in response to the questions set forth in the foregoing deposition, carefully translated by me from the English to the Spanish, to said witness, and the answers translated and written down by me, as said witness made them in response thereto. I have no interest, direct, contingent, or otherwise, in the claim to which the foregoing deposition relates, and I am not the agent or attorney of said La Abra Silver Mining Company, or of any person having such interest.

(Signed,) CARLOS F. GALAN,
Interpreter and Translator.

Sworn to and subscribed before me, this twenty-third day of May, A. D. one thousand eight hundred and seventy, at eight o'clock P. M.

(Signed,) ISAAC SISSON,
[SEAL.] *U. S. Com'l Agent.*

CONSULATE OF THE UNITED STATES,
Port of Mazatlan, State of Sinaloa, Republic of Mexico, ss:

I, Isaac Sisson, commercial agent of the United States of America, with consular powers, in and for the port of Mazatlan and its dependencies, in the Republic of Mexico, do hereby certify, that on this twenty-third day of May, A. D. one thousand eight hundred and seventy, at eight o'clock p. m., personally appeared before me, at the consular office of said United States, Matias Avalos, known to me to be the person described in the foregoing deposition, as a witness thereto, who, after being duly sworn by me, according to law, testified as hereinbefore set forth; and I do further certify that I understand, speak, and read the Spanish language, but at the request of said witness, I called upon C. F. Galan, Esq., the best and most reliable translator and interpreter known to me in the State of Sinaloa, who, after being by me duly sworn to translate correctly my questions to the witness and his answer in response to the same, he did in my presence put the questions in Spanish, and write down his answers translated into English, and both were carefully read in Spanish by him before me, to said witness, who thereafter consented to, and signed, or made his mark to the same, in my presence, and he, the aforesaid C. F. Galan, upon his oath, did say, that the contents of the foregoing deposition are the true, correct, and literal translations of the answers made by said witness, in response to the questions set forth in the foregoing deposition, and translated to said witness into Spanish, by said interpreter. And I do further certify, that I am competent, by the laws of the United States of America, to take depositions, and administer oaths, and I have special instructions from the Department of State of the United States of America, to take depositions of witnesses on behalf of American claimants, to be submitted to the Joint Commission of the United States of America and the Mexican Republic, in session at Washington, D. C.; and I do further certify that I have no
interest, direct, contingent, or otherwise, in the claim to which the forego-
52 ing deposition relates, and that I am not the agent, or attorney of said claimant, or of any person having such interest; and I do further certify, that I know said Matias Avalos, the above-mentioned witness; that he is one of the correos, or mail carriers, from Durango to this place, trustworthy, and a credible witness, and that his statements are entitled to full faith and credit.

In testimony whereof, I have hereunto set my hand and official seal of the consulate of the United States, this the day and year first above written.

(Signed) ISAAC SISSON,
[SEAL.] *U. S. Commercial Agent.*

No. 489.

The following are copies of official orders from the local authorities of San Dimas district, to the superintendent of the Abra Silver Mining Company, at Tayoltita:

Translation of Exhibits "V," "W," "X," "Y," and "Z," in their order.

EXHIBIT V.

"2D COURT-CONCILIADOR, }
"TAYOLTITA." }

"To the Superintendent of the Abra Reducing Works:

"By the communication of yesterday, dated the 3d, received from the Gefe Politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, upon the system of "thirds," that you immediately vacate the mines, to allow the operatives to work them on their own account, without further loss of time.

"Liberty and reform. Tayoltita, July 4th, 1867.

"GUADALUPE SOTO."

EXHIBIT W.

"2D COURT-CONCILIADOR, }
"TAYOLTITA." }

"To the Superintendent of the Abra Reducing Works:

"The court notices, with the greatest displeasure, that twenty-four hours have elapsed since it addressed you a communication, to which you have made no reply. You are ordered to arrange your work with the operatives within two hours; and if you come to no arrangement, you will vacate the mines, so that they may lose no more time.

"Liberty and reform. Tayoltita, July 5, 1867.

"GUADALUPE SOTO."

EXHIBIT X.

"GEFETURA POLITICO }
OF SAN DIMAS." }

"To the Representatives of the Mines, Tayoltita:

"The Gefetura, being informed that you have stopped the mines in that
54 mineral, informs you that this is not the engagement you entered into with me, and that it hence believes that you place no value upon your word. Nevertheless, if you don't choose to continue your work, give the people permission to collect ores in the mines, as I will not hold myself responsible for the consequences, in a town where the people are without work.

"Independence and reform."

"San Dimas, July 10, 1867."

"M. MORA."

EXHIBIT Y.

"GEFETURA POLITICO OF THE }
PARTIDO OF SAN DIMAS. }

"To Judge Guadalupe Soto, Sole Conciliador, at Tayoltita:

"From your communication, this Gefetura has learned, with great displeasure, the abuses committed by these Americans, who at first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one-third." "Notify them through your court, and by my order, to at least comply with the last contract, that is, to pay them one-third in money, otherwise that they vacate the mines, and allow the operatives to work them as they can, since neither the mining ordinances permit them to pay in goods only, nor will the Government consent to such abuses, and it is already tired out with the thousand complaints upon this subject."

"You will show this communication to the American in charge in that mineral."

"Independence and Reform.

"M. MORA."

"SAN DIMAS, June 3d, 1867."

EXHIBIT Z.

"SAN DIMAS, *July* 27, 1866."

"To Colonel J.A.de Lagñel.

"DEAR SIR: Both Mr. Laeuz, and the Gefe of the Partido, will inform you of the commission with which I am charged, by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command; but, informed as I fully am, of the injury which my continuance in the district would cause to its residents, and *particularly those having large business and property*, in the maintenance of my force, I have resolved to leave immediately, as I

think that it will be for the interest of your business, and upon the sole condition that the residents of the district furnish me with $1,200 for my departure." "I am confident that I take this step as the least burdensome, because, if I remain here, I must obtain means *wherever they may be found*, but as I have before stated, my purpose is to the individual guarantees which the laws accord to the people."

"I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the Gefetura of the Partido, on your place."

54 "I avail myself of the opportunity of offering myself as your friend and obedient servant,

"JESUS VALDESPINO."

Doc. No. 7.

In the matter of the claim for damages of La Abra Silver Mining Company against the United States of Mexico.

Deposition of John Cole for claimants.

UNITED STATES CIRCUIT COURT ROOM, DISTRICT OF CALIFORNIA, }
City and County of San Francisco. }

3 O'CLOCK P. M., *March 15th*, 1870.

Personally appeared before me, George E. Whitney, clerk and commissioner of the United States circuit court for the district of California, John Cole, a witness on the part and behalf of La Abra Silver Mining Company, the claimants in the above-entitled cause, and having been duly sworn by me according to law, to tell the truth, the whole truth, and nothing but the truth, deposes and says, that his name is John Cole; that he is forty years of age; that he was born in the county of Northumberland, in the State of Virginia, but was raised in Wayne county, North Carolina, where he resided from childhood, until he came to Mexico to reside; that he is now, and always has been, a citizen of the United States of America; that he has resided in Mexico and California since the year eighteen hundred and forty-nine, (1849;) that he now resides on a plantation, or ranch, at Camacho, in the district of Mazatlan, in the State of Sinaloa, in the Republic of Mexico; that his residence, in the years eighteen hundred and sixty-six, (1866,) and eighteen hundred and sixty-seven, (1867,) and eighteen hundred and sixty-eight, (1868,) was divided between said ranch in Sinaloa, and the mining district of San Dimas, in the State of Durango, in the Republic of Mexico; that his family resided at the time of the events hereinafter named, in eighteen hundred and sixty-six, (1866,) eighteen hundred and sixty-seven, (1867,) and eighteen hundred and sixty-eight, (1868,) upon the said ranch, or plantation, in Sinaloa, but about one-half of his time, during the years named, was devoted to mining in said district of San Dimas, in the State of Durango, and on the road between Mazatlan, Sinaloa, and said district of San Dimas, in the State of Durango, Mexico, as hereinafter set forth; that he is now temporarily in San Francisco, on business, and will return to his residence in Sinaloa by the first steamer to Mazatlan.

That he is now, and was in eighteen hundred and sixty-six (1866,) eighteen hundred and sixty-seven (1867,) and eighteen hundred and sixty-eight (1868,) part owner of the "Nuestra Señora de Guadalupe Gold and Silver Mines," and a share-holder in the mining company of that name; these mines are situated about one and a half to three miles from Tayoltita, in the mining district of San Dimas, in the State of Durango, Republic of Mexico; that he worked said mine in connection with said company, for three years, until interfered with by the authorities, and they were compelled to leave there.

Deponent further says, that he knows the mines, and works at Tayoltita, in said district of San Dimas, which belonged to, and was owned by said La Abra Silver Mining Company. That the said Guadalupe mine, in which deponent was interested, is situated about one mile and a half to two miles from the works of "La Abra Silver Mining Company," at Tayoltita. And deponent further says, that he is one

55 of the oldest American miners in that district, and the said Guadalupe mining company was one of the oldest incorporated American mining companies in said district; that he is well acquainted with all the mines in said district, and especially with the mines at or near Tayoltita, and that he knows that the said "La Abra Silver Mining Company" was, in the years eighteen hundred and sixty-six (1866,) eighteen hundred and sixty-seven (1867,) and eighteen hundred and sixty-eight (1868,) one of the largest, and their machinery one of the best and most extensive of any in that mining district, either of the native or foreign companies; that he assisted the "La Abra Silver Mining Company," to transport their heavy and

excellent stamp mill and machinery, from Mazatlan, Sinaloa, to their said mines in San Dimas, Durango, in eighteen hundred and sixty-six (1866.) and eighteen hundred and sixty-seven (1867;) that he had the control of the forwarding of said machinery and supplies, by three, and sometimes four mule trains, owned by, and in the employ of said La Abra company, consisting of about forty (40) mules to the train, sometimes a few more, and at other times a few less, but never less than thirty (30) mules to each train, so engaged in packing the stamp mill, supplies, and machinery, from Mazatlan, State of Sinaloa, to the mines of the said "La Abra Silver Mining Company," at Tayoltita, in the aforesaid district of San Dimas, State of Durango, in the years eighteen hundred and sixty-six (1866,) and eighteen hundred and sixty-seven (1867;) that said mules, machinery, and supplies, were the property of the aforesaid "La Abra Silver Mining Company," and they were of the very best quality.

The machinery and supplies of said company, of every description, was transported over the mountains from Mazatlan to Durango, a distance of about one hundred and sixty-five (165) to one hundred and seventy (170) miles, on mules' backs, over one of the most dangerous and worst roads that he ever saw—over mountains and precipices, and through wild ravines. The machinery and supplies for the company, so transported, during the years eighteen hundred and six'y-six (1866) and eighteen hundred and sixty-seven, (1867) must have cost the said company not less than one hundred and seventy-five thousand ($175,000) dollars, and the stamp mill, including the tools, implements, sheds, outhouses, and improvements of all kinds on the said property, in the judgment of deponent, must have cost not less than three hundred thousand ($300,000) dollars, and they may have cost much more than that amount; that of said property, five veins, owned and opened by "La Abra Silver Mining Company," and known respectively as "La Luz," "Cristo," "La Abra," "Rosario," and "Tapia" are of the richest in the State—a fact which has also been mentioned by Mr. Ward in his history of Mexico; that he knows the fact that fifty thousand ($50,000) dollars in gold coin was paid by said La Abra Silver Mining Company, through General Thomas J. Bartholow, of St. Louis, Missouri, and David J. Garth, of New York, to Don Juan Castillo de Valle, of San Dimas, in said State of Durango, Mexico; and he believes, but does not know the fact of his own knowledge, that said Don Juan Castillo de Valle had a good Mexican title to said property, and good right to sell and dispose of the same,—it was so understood by everybody he knew in that district.

Deponent further says that he is personally cognizant of the fact that Charles H. Exall, the last superintendent of the said "La Abra Silver Mining Company," was driven away from their mines, together with his American employees, and was compelled to abandon the same by the influence and connivance of the authorities of the district of San Dimas, and by the conduct of the troops
56 of the Liberal Government of Mexico, acting under President Juarez, who, to the knowledge of deponent, seized upon three of the mule trains of said company, during the years eighteen hundred and sixty-six (1866) and the early part of eighteen hundred and sixty-seven, (1867,) and converted the same, together with all the supplies packed upon them, to their own use, or the use of their Government; and upon one occasion, one of the officers, an American, in charge of one of the said mule trains was killed by the said troops for attempting to defend the property in his charge; he was acting quartermaster of said train at the time.

Deponent says, he has heard Mexican soldiers, in said Liberal service at that time, boast of this murder, and justify it upon the ground that "the supplies were needed for the army, and they could not secure them without killing the quartermaster," as the officer in charge was called; that an officer of the said Mexican army, who stopped over night with deponent at his said ranch in Sinaloa, sometime in the summer or fall of eighteen hundred and sixty-seven, (1867,) with a troop of Mexican soldiers, referring to the aforesaid murder, told deponent that it would "learn the gringos" (foreigners) a lesson; that when they (the troops) wanted anything in future they probably would not be denied, as they had been, by the quartermaster of "La Abra Silver Mining Company's pack trains;" that the officer referred to was acting as captain, commanding said troop, and had at the time about forty (40) men under his command.

Deponent asked him if he knew anything in reference to the above-named occurrence, when he replied in substance as above stated; and said Mexican officer also told deponent, in the same conversation, that the capture of said mule train was ordered by his superior or commanding officer in the said Liberal army of Mexico; and he also added, with seeming regret, that he was very sorry the said officer or quartermaster of the mule train was killed, but that they must have provisions and supplies for their army at whatever cost, and politely gave his word, and the *usual pledges of Mexican authorities*, that all damages for property taken from Americans for the use of their army should be paid for by his Government.

Deponent further says, he is positive that the said "La Abra Silver Mining Company" could not have recommenced work on the said mines, after Mr. Exall, the superin-

tendent, had been compelled to abandon them in the month of March or April, eighteen hundred and sixty-eight, (1868,) which compulsory abandonment deponent knows to be the fact, and from what he was able to gather from the authorities and citizens of the said district of San Dimas, it is his opinion that neither the aforesaid "La Abra Silver Mining Company," nor any other American company, with similar machinery and prospects, could have returned and worked the said mines in peace and without interference from the Mexican local and national authorities, or, at least, without the sure connivance of said authorities with Mexican citizens, to deprive them of their property; that all the American companies with which he is acquainted in the said district of San Dimas, excepting only one, have been driven off and compelled to abandon their mines and mining property, by the connivance of Mexican authorities, and for the want of that protection which was promised them by the proclamations of the Mexican agents, in California and other States of the American Union, and by the decrees of President Juarez himself; that under those decrees, millions of dollars were invested in mining operations in that part of Mexico; that he knows
57 the protection offered Americans, and other foreigners in eighteen hundred and sixty-five (1865) and eighteen hundred and sixty-six, (1866,) and guarantees and pledges of protection made by Mexican authorities, to Americans especially, have been violated by said authorities, and that a decree from President Juarez, withdrawing the protection that induced said Americans to invest their capital there, left them to the mercy of selfish Mexican citizens and authorities, as he has stated; that during the years eighteen hundred and sixty-six, (1866,) and eighteen hundred and sixty-seven, (1867,) and up to March or April, eighteen hundred and sixty-eight, (1868,) it was a common report in that district, among Mexicans and Americans, that said "La Abra Company" were annoyed and in constant trouble on account of the jealousy and hostility of the Mexican authorities, and that they had to leave there; and deponent knows the fact himself, that said company was hindered and delayed in their said work by the interference of said authorities, civil and military, in connivance with some of the citizens there, which occurred frequently during the three years mentioned. That he knows the fact that the said La Abra Company had taken out and left upon the ground, in April, eighteen hundred and sixty-eight, (1868,) large quantities of rich silver ores, as he believes, from one thousand tons to fifteen hundred tons, and that nearly all of the richest and most valuable of the same were taken off by Mexicans, and carried away from said mines, after superintendent Exall had been forced to abandon the same, in March, or the early part of April, eighteen hundred and sixty-eight, (1868;) that deponent has frequently *seen* them packing off said ores from the works of said company, in sacks upon mules backs, in March, April, and May, eighteen hundred and sixty-eight, (1868,) and they must have taken off largely more than two hundred and fifty thousand, ($250,000), dollars worth of the said ores, independent of, and above the cost of reducing the same to bullion. Deponent believes the said company, at the time they abandoned the same, had out about twelve hundred (1,200) tons of said silver ores, which would have yielded said company, in his opinion, not less than from one hundred dollars ($100) to a thousand ($1,000) dollars per ton of pure silver, and the richest of said ores would have averaged more than two thousand ($2,000) dollars per ton, after its reduction; that while said Exall was still there, trying to work said mines, in February and March, eighteen hundred and sixty-eight, (1868,) Mexicans were packing off said ores by night and day, but he did not dare to go out and defend them, as his life was threatened if he had attempted it; that deponent has heard those threats made by the official prefect of San Dimas, Macario Olvera, and deponent was informed, and he believes from common report at the time, that one Camilo Perez, the local judge of San Dimas, in October or November, eighteen hundred and sixty-eight, (1868,) stated that he had contributed to the driving away of said "La Abra Silver Mining Company," and that he boasted of the fact; and the prefect of San Dimas, Macario Olvera, *told deponent* that the said company were compelled to leave there, in the spring of eighteen hundred and sixty-eight, (1868,) and that *if they came back, he, the said prefect, would have them driven off again.*

Deponent further says, that said company was very unpopular with said Mexican authorities and citizens, for the reason, as was generally believed there by Americans, that said company had commenced their mining operations on so grand a scale, and with prospects of realizing a splendid fortune so quickly, that Mexican authorities and citizens grew desperately jealous and envious of them, and their conduct, in
58 March and April, eighteen hundred and sixty-eight, (1868,) proved conclusively to deponent that said authorities never intended to permit said La Abra Silver Mining Company to realize any profits from their heavy outlays and expenditures upon their said mines; for the support of this conclusion, deponent says that he heard the statement of the said prefect, Macario Olvera, of said district of San Dimas, who told deponent, he thinks it was in the month of October or November, eighteen hundred and sixty-eight (1868,) or about that time, that said La Abra Silver Mining Company had been compelled to quit their said mining operations on account of the

hindrances and annoyances occasioned by the interference of said military authorities, in capturing their supplies and mules, on the road between Mazatlan and San Dimas, as aforesaid, and also because, as said prefect told deponent, it was the fixed determination of himself, and other Mexican authorities there, never to permit said La Abra company to carry out of the country a dollar's worth of said silver and gold; and the same official told deponent that the feeling there, in San Dimas, by Mexican citizens and authorities, against said company, was so bitter, that he knew they never could return and recommence operations there with safety to life or property; that they should be driven away if they attempted it. This conversation took place, between deponent and the said prefect, at said town of San Dimas, in the said district of San Dimas, he thinks, in October or November, eighteen hundred and sixty-eight, (1868,)—he is certain it was in the fall or winter of eighteen hundred and sixty-eight, (1868;)—deponent says, it might have been as late as December, eighteen hundred and sixty-eight, (1868,) or January, eighteen hundred and sixty-nine, (1869.) Deponent was, and is yet, well acquainted with said Olvera, and on friendly terms with him, but he knows the said prefect is an enemy to, and hates the said "La Abra Silver Mining Company;" that he denounced them as "Dirty American Gringos," and the said prefect, when deponent, at one time, consulted him, by request, as to the safety and protection of said company, should they attempt to repossess themselves of their mines, as they thought of trying to do, declared to him, deponent, that if said company ever attempted to return there, or to recommence work upon their said mines in that district, he would have them sent away faster than they were driven off before, or words to that effect in the Spanish language, and he made the following remarks: "Let them dare to return, and I'll fix them so they they won't get away quite so safely as before;" and again, he said, "they can't work that machinery in this district, and their safest plan is to stay entirely away from Mexico," or words to that effect; he thinks, those are the very words, spoken in Spanish by him, as properly interpreted by deponent, in the English language; that those unkind words made an impression upon his mind, never to be forgotten, and deponent advised one of the members of La Abra Silver Mining Company, of the same, soon thereafter. Deponent says, that those remarks, and all others made to him by said authorities, or citizens, were always made to him in the Spanish language, which he has spoken and understood well, for the last twenty years, having resided in the Republic of Mexico during that period, most of the time, and always conversing, as he did, freely with Mexicans in their own language; that he has resided principally in Mexico since the close of the Mexican war, in which he was a soldier in the United States service.

Deponent further says, he knows the fact that the trains of mules were captured
59 by the said military authorities, from La Abra Silver Mining Company, on the road from Mazatlan to San Dimas, and that these captures, to his knowledge, took place three several times in 1866 and 1867, and that the quartermaster of one of them, in charge, was killed as aforesaid; and that he has information of the capture and loss of several other mule trains belonging to said company, engaged in packing provisions and supplies for them, as aforesaid, which captures were reported to have been made by the military authorities of the Republic of Mexico, but that he knows of his own personal knowledge of only the three trains that he has mentioned as having been so taken, but that he believes the fact that the other trains of mules and valuable supplies were taken from said company, as reported at the time, not less than six (6) or seven (7) times during the years eighteen hundred and sixty-six, (1866,) eighteen hundred and sixty-seven, (1867,) and the early part of eighteen hundred and sixty-eight, (1868,) as he has heard Mexican soldiers belonging to the army of that Republic boast of said acts, and they laughed about La Abra Company having made good quartermasters and commissaries (proveedores) for supplying their army, and they justified the same on the usual plea of military necessity.

The mules captured from the said company, as aforesaid, were of the largest and best quality of mules; they were worth as much money as any mules in that country; about one hundred and twenty (120) of them were so captured, to his knowledge.

I have never known said company to own a poor or bad mule, or a poor horse.

Mules at that time were worth much more than they are now, as they were in demand for the use of the army as aforesaid, and mules of that class, even now, in time of peace, are very valuable for packing; that such mules packed what Mexicans called a "carga," (300 pounds,) and in many cases while packing machinery, as for said company, they had to pack as high as five hundred (500 lbs.) pounds, which in many cases was the weight of a single piece of the same. He does not know the amount or value of the supplies taken from said trains, but it was a common report amongst Mexicans there, at the time of the forced abandonment of said mines and property by said company, that they had lost mules, pack saddles, and supplies, in the three years named, to the amount of seventy-five thousand ($75,000) to one hundred thousand ($100,000) dollars.

Deponent believes that two of the six or seven trains heretofore mentioned, which were so captured from said company during the years named, were captured by the so-called "Imperialists."

Deponent has been reliably informed that such was the case, but of this last-named fact he is not certain, as his information is from common report.

Deponent says he does not know, of his own knowledge, and cannot estimate accurately, the loss to said company by the capture of said mule trains, and other supplies of which he has spoken, but he believes it must have been as much or more than was reported as aforesaid. And deponent further says that their losses by said forced abandonment of their mines and mining property, and the ores stolen from them before and after the said abandonment, together with all investments made by them for mines, machinery, stamp-mill, houses, patios, mill-races, buildings, and other improvements, and for all the labor of opening their mines in that district, if consequential damages are taken into consideration and account, and in estimating the damages of all they might have realized, if they had been permitted by said authorities to have completed their extensive works, and to have continued said mining operations to the present day, at two million dollars ($2,000,000) at least, and that, of this sum, nearly one-third of the amount must have actually been paid out by said company, including all their investments, and expenses, and interest upon the same to this time.

Deponent further says that he has no interest, direct, contingent, or otherwise, in the claim of said company, to support which his deposition is here given, and that he is not the agent or attorney of any person having such interest, and that upon the happening of no event would he be entitled to any part of the sum which may be awarded to said company by the commissioners. And further, this deponent saith not.

(Signed,) JOHN COLE.

Subscribed and sworn to before me, this, the fifteenth day of March, A. D. eighteen hundred and seventy, (1870.)

[SEAL.] (Signed,) GEO. E. WHITNEY,
Clerk and Commissioner of the United States Circuit Court,
District of California.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, George E. Whitney, commissioner of the United States circuit court for the ninth circuit and district of California, and clerk of the same, do hereby certify that John Cole, whose deposition is herein above written, attended before me, on this fifteenth day of March, A. D. eighteen hundred and seventy, (1870,) at the United States circuit court rooms in the city and county of San Francisco, and was publicly and duly sworn by me, in accordance with the laws of the United States of America and the State of California, to tell the truth, the whole truth, and nothing but the truth, in the above-entitled matter; and thereupon he deposed and testified as herein set forth; that said deposition was carefully read to said John Cole, by me, and that he thereafter signed the same in my presence.

I do hereby certify that said deposition was taken by me in the city and county of San Francisco, in the State of California, in the United States of America; that I am competent to take depositions, by the laws of said State and of the United States; that I have no interest in the claim to which the testimony of said John Cole, in said deposition, relates, and that I am not the agent or attorney of said La Abra Silver Mining Company, claimants in the above-entitled cause, nor for any person having such interest.

I do further certify that said deposition was reduced to writing by Richard T. Hill, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify, that I do not know John Cole, the above-named affiant, but I do know Aaron Brooks, of San Francisco, who certifies below, upon oath, to the good character for truth and credibility of said John Cole as a witness; and I hereby certify to the credibility of said Aaron Brooks for truth and veracity, and that his testimony is entitled to full faith and credit.

Witness my hand, and the seal of the said United States Circuit Court, for the ninth circuit and district of California, at San Francisco, in said district, this fifteenth day of March, A. D. 1870.

[SEAL.] (Signed) GEO. E. WHITNEY,
Clerk and Commissioner of the United States Circuit Court,
District of California.

61 UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and county of San Francisco:

Aaron Brooks, of San Francisco, being publicly and duly sworn according to law, to tell the truth, the whole truth, and nothing but the truth, deposes and says, as follows: I reside at number 246 Third street, in the city of San Francisco, State of California.

I know John Cole, who has made the foregoing deposition; that he is a credible witness, and his deposition is entitled to full faith and credit; that I have no interest in the claim to which the foregoing testimony of said John Cole relates, and that I am not the agent or attorney of any person having such interest.

(Signed) AARON BROOKS.

Subscribed and sworn to before me this fifteenth (15th) day of March, A. D. 1870.

[SEAL.] (Signed) GEO. E. WHITNEY,

Clerk and Commissioner of the United States Circuit Court for the district of California.

Doc. No. 27.

Deposition on behalf of the claimant, Abra Silver Mining Company vs. *The United States of Mexico.*

Deposition of Juan Francisco Gamboa, to be used before the Joint Commission of the United States and the Republic of Mexico, sitting at Washington, District of Columbia.

UNITED STATES CONSULATE, PORT OF MAZATLAN,
STATE OF SINALOA, *Republic of Mexico, ss.*

Before me, Isaac Sisson, Commercial Agent of the United States of America, for the port of Mazatlan and the dependencies thereof, personally came Juan Francisco Gamboa, who having been duly sworn according to law to speak the truth, the whole truth, and nothing but the truth, as a witness on behalf of the claimant, deposed as follows:

My name is Juan Francisco Gamboa; forty years of age; I was born at San Ygnacio, State of Sinaloa, Republic of Mexico; I reside at Limon, in the said district of San Ygnacio, and I resided there during the occurrences with regard to which I have been produced to testify; my occupation now is, and always has been, farming business and transporting provisions and other articles for the mining companies in the States of Durango and Sinaloa, also purchasing and selling provisions, &c.

I am acquainted with the works of the Abra Silver Mining Company at Tayoltita, in the mineral of San Dimas, State of Durango, Mexico. I was acquainted with the principal employees of the said company at the time they were in operation at Tayoltita, during the years 1865, 1866, 1867, and up to the time the company abandoned the said mines, which I think was in the month of March, 1868. I know that some mule trains belonging to the company, which were loaded with a large quantity of provisions and other articles, were taken, and it was said that this was done by the Republican army, but I did not personally witness it. I heard it said at the time of the capture of a mule train belonging to the said company, which was loaded with provisions and other articles for their operatives in the said mines. As the head muleteer was lost, and never seen afterwards, it was supposed that he had been killed by those who captured the mules. I also heard of the murder of Grove, at a place
62 called Arrayo del Candalero, between San Ygnacio and the company's mines in Durango; but I know nothing, personally, of the facts of the murder, except from general hearsay.

I know that the Abra Silver Mining Company was the owner of rich and valuable mines at Tayoltita, and the vicinity. They were considered as being very abundant in silver ores, of the best quality. I know that their machinery was of the best kind, and that when they were compelled to abandon it that they had everything ready to work the mines and silver ores on a large scale.

That they had extracted and transported to the reducing works belonging to them, a large quantity of rich ore, which, judging from the size of the heap which I saw go into the mill and the outhouses, and which was cleansed and ready for reducing, was not less than from six to eight thousand cargas of ores. It appeared to me very rich in silver, and ore which might produce from three to eight marks per carga, or even more; that I was on the spot at the time, or a little before they abandoned it; that I had a contract for supplying the said company with provisions for their employees, such as lard, corn, jerked beef, &c. I also had a contract for transporting ores from the mines to the reducing works, and from the mill to the outhouses, when they were working at Tayoltita, made with Superintendent Exall, at a stipulated price per hundred cargas; but the breaking up and driving away of the said company rendered it impossible for me to carry out my contract. The last time that I was there, which, it appears to me, was in the month of February, or a little before their expulsion, Mr. Exall told me that it would be impossible to carry out the contract with me, in consequence of the conduct of the authorities, who were troubling and interfering

with the company's operations to such an extent, and in such a manner, that he would be compelled to abandon the work at the mines, to save his life; that he could not pay me the contract, and as there were no personal guarantees there for life or property, he would be compelled to abandon his operations and the idea of his carrying out his contracts with me, and others.

From the information afterwards obtained *from my countrymen and friends at Tayoltita*, I was convinced that what Superintendent Exall told me was correct, and that there really existed among the authorities and people of Tayoltita, and in all the district of San Dimas, a firm intention and determination to rid themselves of the company, by any means. I am satisfied, from what I saw and heard from the authorities and people, that it would have been impossible for the company, or their American employees, to have continued their mining operations in that district, with the least hope of safety, or guarantees for their life or property. It was currently said there that the richest ores belonging to the company, and the best which they had collected at the mill, were openly and with impunity stolen by the Mexicans, and that certain authorities of the district protected these persons in carrying off the ores, and that Superintendent Exall did not dare to leave the reducing works to prevent them.

I do not know that the statements of these persons at Tayoltita are correct, but coming from my own countrymen, and being made at the time, I may, and do say, that I then believed them to be correct. I know that the expulsion of the said company occurred shortly after, and both Americans and Mexicans with whom I conversed upon the subject, shortly after the occurrence, attributed the abandon-
63 ment of the ores, stores, mines, and property of the Abra Silver Mining Company to the interference of the authorities of the district, and their instigating the people to the commission of the depredations, which I have stated, which resulted in the abandonment.

I know that one of the other American mining companies in that part of the country lost two of their principal employees, who were killed, and the rest were driven away from their work. I also know that of the many foreign mining companies in that district, who commenced operations with good prospects, one only remains, whose officers, I believe, are not Americans, but Englishmen, and probably the shareholders. For some unexplained cause, the American mining companies who have worked in this part of Mexico have not met with much opposition in *investing* their large capitals, and in putting up their machinery, but they have been compelled to leave the country before realizing anything from their undertakings, and some of them, as the Abra Silver Mining Company, before they had completed their preparations for extracting and reducing the ores.

I have no interest, direct, indirect, or contingent, in the claim in support of which I have given this deposition, nor am I the agent or attorney of any person who has. I have given my deposition, because it appears to me an act of justice towards the company, and have made it in Spanish, in order to see what I was signing, although I have the uttermost confidence in Mr. C. F. Galan, the interpreter.

JUAN FRANCISCO GAMBOA.

Subscribed and sworn to before me, on this 14th day of May, 1870.

ISAAC SISSON,
U. S. Com. Agent

[Seal of the U. S. Consul.]

[Here follows, in the original, the affidavit of the interpreter, Chas. F. Galan, that this witness was properly and lawfully examined by the consul, and to the signing by witness.]

[Here follows, in the original on file, the certificate of the United States consul to the lawful taking of this deposition, and that he knows the affiant, Gamboa, personally and by reputation; that he is a man of good character for truth, and a credible witness; and that his statements are entitled to full faith and belief.]

Doc. No. 19.

In the matter of the Claim for Damages of "La Abra" Silver Mining Company against The United States of Mexico. Deposition of William G. S. Clark. To be submitted to the Mixed Commission of the United States & Mexico. In session at Washington City, D. C.

UNITED STATES CONSULATE,
Port of Mazatlan, State of Sinaloa, Republic of Mexico, ss:

Personally appeared before me, Isaac Sisson, United States commercial agent in and for the port of Mazatlan and its dependencies, William G. S. Clark, introduced as a witness on the part and behalf of "La Abra Silver Mining Company," claimants in

the above-entitled matter, and having been by me first duly sworn, according to law, deposes and says:

That he was born in England, *as he believes;* that he is, and has been for many years, a citizen of the United States of Mexico; that he is now fifty-three years
54 of age; that he resides at Camacho, in the district of Mazatlan, in the State of Sinaloa, in the Republic of Mexico; that he has resided at said Camacho for seven years last past; that his occupation is, and has been for the past ten years, that of a merchant and farmer, or planter; that he resided at said Camacho, and was so engaged in planting, and trying to raise cotton and corn, and also carrying on mercantile business, during the events about which he is here called upon to testify; and that he was also engaged, a portion of that time, in forwarding machinery and supplies to "La Abra Silver Mining Company," at Tayoltita, in the mining district of San Dimas, State of Durango, Mexico; the said company employed deponent, and one John Cole, also of Camacho, to receive and forward a large ten-stamp mill, for crushing silver ores, or metals, besides a large amount of machinery for the same, dry goods, provisions, stores, and supplies of all kinds needed by said La Abra Company, in carrying on their heavy works of silver mining, at said Tayaltita. I was also employed in forwarding machinery and supplies for a company called, I think, the "Nuestra Señora de Guadalupe Gold and Silver Mining Company," of the same district, and for other companies, in the State of Sinaloa; and deponent further states, that he is, or was, well acquainted with the said La Abra Silver Mining Company, its agents, or superintendents, and with many of the subordinate employees of said company, while carrying on their mining operations at said Tayoltita; that he knew General Thomas J. Bartholow, Colonel de Lagñal, and Charles H. Exall, the first, second, and third superintendents, and, as he believes, all the superintendents that have ever been employed by said company.

And deponent further says, that while he was so employed, in the work of forwarding said machinery and supplies to said La Abra Silver Mining Company, to their works in Durango, in the spring, or summer, of 1866, he was a witness to certain exactions, or "*prestamos,*" from said company, by the different commanding officers of the district of San Ygnacio; that, at one time in particular, while said De Lagñel was superintendent of said company, he, deponent, had a large amount of provisions under his charge for said company, and which was to have been forwarded to their mines in Tayoltita, but one Colonel Donato Guerra, of the Republican army of Mexico, then commanding that district, levied upon said supplies a tax of six hundred dollars, ($600,) before deponent could forward them, as directed by said superintendent of La Abra Company, and that said tax had to be settled and paid by deponent before said Colonel Guerra would permit said goods to be forwarded; that deponent mentions this as only one of many of the "*prestamos,*" or forced loans paid by said "La Abra Silver Mining Company," upon the demand of the various military chiefs of the Republican army aforesaid.

Deponent recollects of a number of other forced loans of this kind, imposed upon said company, but cannot state the amounts with accuracy, as the same were not paid by him.

Deponent further states, that on the occasion mentioned, when the said Colonel, or General Guerra compelled the payment of said "*prestamo,*" before deponent could get said supplies from the possession of the military, he was detained for four days by said acts of the military, and that, in consequence of this delay, a barrel, or carga of oil, for the mill and machinery of said La Abra company, was so injured by the shrinking of the casks, that the said oil had all run out of the casks, when delivered by said military commander, and that in consequence thereof, said company was deprived of the necessary oil for their said machinery, for many weeks thereafter, as Mazatlan
65 was then in possession of the French troops, and by a stringent order of the commander of the Liberal army, no person was allowed, under heavy penalties, to enter the port of Mazatlan for some months thereafter; that the French commander of Mazatlan issued, about that time, an order, forbidding that any kind of goods or supplies should leave the port, inland, under equally heavy penalties. That said superintendent of La Abra Company came back to Camacho, a few days after the loss of said carga of oil, and tried, in every possible way, to procure permission of the said commander of the Liberal troops of that district, to visit the port of Mazatlan, or the lines of the French, with a view to making an effort to gain admission to the Mazatlan market, in order that he might supply the place of said oil, so much needed by said company, which had been lost or stolen while in the forced possession of said General Donato Guerra, but he was refused such permission; and deponent further says, that he heard said superintendent of La Abra company complain, at the time, that even that circumstance, trifling as it might appear to those not acquainted with the uses and value of such oil for machinery, had caused a complete paralysis in the work of putting up said machinery at their mining hacienda, as the same had become wet and rusty, in transporting it to the mines, and could not be put in working order, in the absence of that material.

And deponent further says, that he knows of other abuses of said company by the military authorities aforesaid; that in the early part of 1866, an employee of said company, whose name, deponent believes, was George Scott, (called "Scottie,") who was on his way from Mazatlan to the works of the company in Durango, was met in the road by an armed party of the said military, between Mazatlan and deponent's residence in Camacho, and said armed party of troops, of the Republican army of Mexico, did, by force of arms, take from said Scott, or "Scottie," about twelve hundred out of three thousand dollars in gold coin, ($3,000,) Mexican ounces, 187½ ounces, which money belonged to said "La Abra Silver Mining Company," and was being transported to said company by the said "Scottie," who appealed to deponent to visit, with him, the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headters, with the said "Scottie," but was informed by the commanding officer that he could not give up said money. After said Scottie had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted, and returned to report the facts to his company at Tayoltita. Said General Guerra denied that he knew of the whereabouts of said "prestamo," or forced loan, and said general stated to deponent, in this conversation, that his army needed all the supplies that could be found anywhere, and, in substance, he said it did not matter in whose possession he should find supplies, or anything else actually needed by the army, that they must be taken, and that the same should be paid for at the close of the war then pending.

Deponent charged his memory with the promises of remuneration for the so-called "prestamos," as deponent had suffered in that way, to a considerable extent, by the orders of the same authorities, and by other exactions from officers of the same army.

66 And deponent further says that he has heard, from reliable authority, that a number of trains belonging to said "La Abra Silver Mining Company" were captured and converted to the use of said army; that said trains of mules were loaded down with provisions and supplies for the use of the employees of said company, when the same were captured and pressed into the said army of Mexico, that said mule trains and supplies were captured by said military, while on the road between Mazaltan and the said mountain district of San Dimas.

Witness did not see said captures made, but from common report, at that time, as well by Mexicans as Americans, he is perfectly satisfied that those depredations upon the property of said company, were made as reported at the time, but to what extent, or of what value of such supplies, deponent will not undertake to say. Directly and indirectly, said company must have suffered heavy losses and injuries by such captures, for said company employed a great number of men, some of whom had families depending upon those supplies, which could not be obtained in the mines; and deponent knows of other, and more flagrant acts against the lives of their employees, and depredations upon the property of said company, by the said authorities, such as the capture of a train of mules and supplies belonging to said company, and the murder of its conductor, or captain in charge of the same, from the fact that he, the said captain, or quartermaster, has never yet been heard from nor found; and of still another, of the murder of another captain, or conductor, of one of the mule trains of said company, who was, at the time, traveling alone, and not in charge of his train of mules, and whose name deponent believes was *Grove*, and whose mutilated body was found where he had been foully and cruelly murdered, at a place called "Candelero Creek;" that this last-named occurrence is well known and acknowledged, he believes, by all citizens and authorities in Sinaloa and Durango, and cannot be denied; that said Grove was supposed to have a large amount of said company's money in his possession, and that the scouts belonging to said army followed him from San Ignacio to the place where his body was found, a number of bullets having passed into and through his body, mangling and mutilating it at a fearful rate.

Deponent further says that the machinery shipped or forwarded to said company at Tayoltita, was a very large ten-stamp mill, and all the necessary machinery thereto belonging; that said company was frequently compelled to pay forced loans, or "prestamos," levied upon their said property, machinery, and supply trains, while the same were passing through from Mazatlan to their mines in Tayoltita, Durango, to the knowledge of deponent. But although deponent was cognizant of many of said forced loans, while he was so engaged in the work of forwarding said machinery and supplies, still he cannot recollect the several sums so exacted and paid, nor the names of the officers of said army who made those exactions, with sufficient certainty to be able to testify on the subject of forced loans, satisfactorily to himself or to said company, except in the cases already named.

And deponent further says, that the plantations of said John Cole, and deponent were made by said La Abra Company their headquarters for receiving and forwarding of machinery and supplies to their mines and large mining operations aforesaid, as Camacho was, at that time, just outside the so-called "Imperial lines;" and, by

reason of this business intimacy with said company, he was well acquainted with the affairs of the company, and their treatment aforesaid.

67 Deponent further says, that he has no interest, direct, contingent, or otherwise, in the claim of La Abra Silver Mining Company against the Republic of Mexico, to support which his testimony is here given, and that he is not the agent or attorney of said company, nor of any person having such interest. And further this deponent says not.

(Signed) WILLIAM G. S. CLARK.

Sworn to and subscribed before me, this 14th day of May, A. D. 1870.

[U. S. CONSULAR SEAL.] (Signed) ISAAC SISSON,
U. S. Commercial Agent.

REPUBLIC OF MEXICO, STATE OF SINALOA,
Port of Mazatlan, Office of the U. S. Consulate, ss:

I, Isaac Sisson, commercial agent of the United States of America, in and for the port of Mazatlan, and its dependencies, in the Republic of Mexico, do hereby certify, that William G. S. Clark, whose deposition is herein above contained, attended before me, at the office of the United States consulate, in said port of Mazatlan, Mexico, on this, the 14th day of May, A. D. 1870, and that he was publicly and duly sworn by me, according to law, to tell the truth, the whole truth, and nothing but the truth, and thereupon he deposed and testified, in answer to the foregoing questions, as hereinbefore set forth; that said deposition was carefully read by me to said William G. S. Clark, and that he thereafter confirmed and signed the same in my presence.

And I do further certify that I am competent, by the laws of the United States of America, to administer oaths, and that I have special instructions from the Department of State of the United States of America, to take the depositions of witnesses, in behalf of citizen claimants of the United States against the Republic of Mexico, to be used in evidence before the Joint Commission of the United States of America and the United States of Mexico, appointed under and by virtue of the convention of July 4th, A. D. 1868; and I do further certify, that said deposition was reduced to writing by C. Lanusa, in my presence, and that said Lanusa has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify that I know, and am personally acquainted with William G. S. Clark, the above-named affiant, and I certify to his respectability, and to his credibility as a witness, and that his statements are entitled to full faith and credit.

And I do further certify, that I have no interest, direct, contingent or otherwise, in the claim to which said deposition relates, and that I am not the agent or attorney for La Abra Silver Mining Company, nor for any person having such interest.

Given under my hand, and the seal of the consulate of the United States of America, this the 14th day of May, A. D. 1870.

[SEAL OF THE U. S. CONSULATE.] (Signed) ISAAC SISSON,
U. S. Commercial Agent.

Doc. No. 23.

In the matter of the claim for damages of La Abra Silver Mining Company against the United States of Mexico; deposition of James Granger on behalf of claimants to be submitted to the Joint Commission of the United States and Mexican Republic, in session at Washington City, D. C.

UNITED STATES CONSULATE, PORT OF MAZATLAN,
State of Sinaloa, Republic of Mexico, ss:

68 Personally appeared before me, Isaac Sisson, United States commercial agent, in and for the port of Mazatlan and its dependencies, James Granger, a witness introduced on the part and behalf of claimants, who having been first duly sworn by me according to law, deposes and makes oath to the following statement, viz:

My name is James Granger; I am forty-two years of age; I was born in Scotland, kingdom of Great Britain; I am residing in San Dimas, district of San Dimas, State of Durango, Mexico. I know the company called "La Abra Silver Mining Company," and knew the superintendents and employees of the same, while said company was mining and carrying on their large mining operations at and near Tayol-

tita, in said district of San Dimas; I was one of the assistant superintendents, and was, also, clerk of said company for about two years, and I had all the memorias, showing the names of all the men working for said company, in their mines and other work done in and about their mining works, each week. I speak and understand the Spanish language, well.

I know General A. W. Adams, attorney for said company. I was present in the room of the court of the *Juez de Primera Instancia*, or Judge of the First Instance, at said San Dimas, in the district of San Dimas, State of Durango, Mexico, on or about the 2nd day of May, 1870, and I commenced to act for said Adams as his interpreter to the judge, or for both parties, in the taking of depositions by said Adams, as attorney in behalf of said "La Abra Silver Mining Company," but the said judge, whose name is Anastacio Milan, refused, in my presence, to take depositions at all while either myself or said Adams was present, and ordered us out of his court-room. Said Adams, not being able to speak Spanish, requested me to ask said judge if he would take the depositions of the two witnesses then before the court, in accordance with the provisions of the joint rules for taking depositions, which had been made by the Commissioners of the United States and the Mexican Republic, in obedience to a treaty, or convention between those two Republics; a copy of the treaty and the rules were presented to the judge by said Adams, and he asked said judge if he would be kind enough to make the certificate of the court also in accordance with the requirements of said rules, as the Commission, he said, had authority in the treaty for making the rules, and said Judge Milan replied that he would not, that he would do neither; that he had nothing to do with the treaty mentioned by said Adams, he said, and nothing to do with the joint rules, and he would not respect or obey them. He admitted, however, that he had read the treaty and rules, and that he understood them. The said Adams then asked said judge, through me, as interpreter, if he, the judge, would obey the treaty itself, and the said judge, Milan, answered, *that he would not;* that he had nothing to do with the treaty, and did not intend to respect or obey it.

Deponent then retired from the court-room, leaving Col. F. Dana as interpreter.

One of the witnesses spoken of above, Aquilino Calderon, who had, to my knowledge, worked for La Abra Company, at Tayoltita, more than two years, his name borne on most of the memorias during that time, when he was summoned before said judge, seemed so affected, he having heard the judge order him, said Adams, and myself, out of the court-room, that he actually swore, in effect, that he had never worked for the company at Tayoltita; that he had only worked at Ventanas and Buena Vista during the five years last past.

69 I then became perfectly well satisfied that no depositions could be taken in that district in support of the claims of American citizens. I know the fact that the feeling there, on the part of citizens and authorities, is intense and hostile to American citizens mining in that district, and especially so to the taking of testimony to support the claims of Americans who have been deprived of their mines and property by acts of Mexican citizens and authorities.

And further deponent sayeth not.

(Signed) JAMES GRANGER.

Sworn to and subscribed before me, this 23d day of May, A. D. 1870.

[SEAL OF THE U. S. CONSULATE.] (Signed) ISAAC SISSON,
U. S. Commercial Agent.

(Here follows, in the original on file, a certificate of United States commercial agent to the proper taking or execution of the deposition; to the respectability and credibility of the witness, and that his statements are entitled to full faith and credit.)

Doc. No. 20.

In the matter of the claim for damages of La Abra Silver Mining Company against the Republic of Mexico. Deposition of Francis F. Dana on behalf of claimants. To be submitted to the Commissioners acting under the Convention of July 4th, 1868. In session at Washington, D. C.

CONSULATE OF THE UNITED STATES,
Port of Mazatlan, State of Sinaloa, Republic of Mexico, ss:

Personally appeared Francis F. Dana, who, having been by me first duly sworn, according to law, deposes and testifies, as follows:

My name is Francis F. Dana; I am forty-eight years of age; I was born in the town and county of Athens, in the State of Ohio, in the United States of America; I

now reside in Mazatlan, State of Sinaloa, Mexico; my occupation is that of a miner; I resided, at the time of the events about which I am called upon here to testify, in the said port of Mazatlan, and was of the same occupation. I was a lieutenant colonel in the Mexican army during the late war between Mexico and the French, and traitors. I know A. W. Adams, attorney for La Abra Silver Mining Company.

I accompanied said Adams from Mazatlan, Sinaloa, to San Dimas, State of Durango, Mexico, within the last two months, as his interpreter, and as chief of his guard. I was present with said Adams, at San Dimas, in the State of Durango, while he was taking, or trying to take depositions there, in support of the claim of La Abra Silver Mining Company against the Republic of Mexico, and as I speak, read, write, and understand perfectly well the Spanish language, I had an opportunity, while mixing freely with the people, and with the judges of the courts, and the prefect at San Dimas, to learn the real feeling with said authorities and people, in regard to the possibility of American citizens carrying on mining operations there.

After being in San Dimas but one week, I came to the conclusion that it is not safe for any citizen of the United States of America to even attempt mining operations in that district, with the slightest hope of security of life or property, nor with any thought of protection. I was present in San Dimas, and assisted said Adams as interpreter and translator, in preparing his application to the judge of first instance, of San Dimas, to take the depositions of two witnesses, whose names were
70 Aquilino Calderon, and Henriquez. The said judge of first instance, when he found out that the witnesses were to be examined before him, became suddenly ill, and actually locked up his store, and refused to see any one. I called on him, and sent my name, and he said he was very sick. This went on for two or three days, and finally said Adams announced that he should stay there until the judge recovered from *his illness;* that he was determined to take the testimony of the witnesses, when the said judge *became suddenly well*, and said he "would attend to the matter, but it was perfectly useless for said Adams to try to get the testimony of Mexican witnesses, against their country, for they would give no testimony that would do him or his case any good, or reflect upon Mexican authorities."

The next day the case was called, but I saw by the actions of the two witnesses that they had been talked to, and they seemed much frightened.

The feeling there, on the part of the authorities and the people, was up to fever heat, and I feared that violence might be used against said Adams before he could get away from San Dimas.

I went with said Adams to the court-house; the witnesses came into the court-room, and were so badly frightened that they shook like an aspen leaf; and when Calderon was called up to testify, either from fright or from design, he actually denied that he had worked for La Abra Silver Mining Company within the past five years, but said that he had worked during that time only at Ventanas and Buena Vista, although Mr. Granger, one of the principal clerks of said company, was sitting before him, and claimed that the name of this man Calderon was on their rolls for two years and more, and that he knew him perfectly well, as one of their old employees.

At this point, General Adams requested me to ask the judge of first instance, who was presiding in said court, and whose name is Anastatio Milan, to put the question to the witness again, that he might understand it, claiming at the same time that the witness could not have understood the question; but Judge Milan declined to read the question a second time to witness, and remarked that he thought the witness understood the question, and would not ask it again, or give him any chance to explain the matter, and hereupon General Adams, attorney for said company, asked said judge to abandon the examination of the said witnesses, and declined to take their depositions; but said judge remarked that he would not abandon the examination, under any circumstances, that he would finish their depositions now, whether the attorney wanted them or not. Said Adams then asked said judge if he, the judge, would take the depositions, and make his certificate in accordance with the printed rules of the American and Mexican Joint Commission, handing a copy of said rules to said judge, at the same time, who refused to take them, and said *he would not.* Said Adams then offered said judge a correct copy of the *treaty*, or *convention*, of July 4th, 1868, between the United States and the Mexican Republic, and asked said judge if he would obey the treaty itself, and said Adams announced to him, the judge, that the rules of the Commission were made by authority, and the presiding judge remarked, thereupon, that he knew all about the treaty, or convention, of the 4th of July, 1868, and the rules of the Commission too; that he, Judge Milan, had a copy of both, but that he did not respect said treaty, and would not obey it; that he had nothing to do with the Commission at Washington, and did not want anything to do with it, and that he would not obey them; and at this moment said Judge Milan ordered deponent, and also said Adams, out of his court-room, and stated that
71 he, deponent, and said Adams, had no business there; that he, the judge, could read the interrogations to the witnesses, and that said Adams and deponent had no business there; but finally he said that he would allow said Adams to be

there, as he did not understand the Spanish language, and could not tell what was going on in the court-room.

Deponent further says, that from the conduct of this evidently prejudiced judge and the remarks he made on that occasion, in the presence of the witness, Calderon, he is not surprised that said witness ignored the fact that his name had been borne upon the rolls, or memorias, of La Abra Silver Mining Company for over two years, or that he declared that he knew nothing of the company or its mining operations. Deponent saw and heard enough, at San Dimas, during the six days he was there, waiting the action of the authorities, upon the application of said Adams to take the depositions of the witnesses named, to satisfy him that no testimony can be taken, and that none will be allowed to be taken by the judges of that district, which would do La Abra Silver Mining Company any good, or reflect upon the authorities of that district, for any part they may have taken in the driving out of said company from their mining operations at Tayoltita; and deponent is also satisfied that said Judge Milan had proved this fact when he said in my presence "General Adams had as well return to his country, for he shall get no witnesses here to swear against their country, and no testimony that will injure Mexico, or do his company any good;"—"this he may rely upon;" and his subsequent conduct on the bench, when he refused to obey the treaty between Mexico and the United States, or the rules made in pursuance thereof, proves to my mind clearly that he knew the influence he was capable of exerting in that direction.

I have no interest, direct, contingent, or otherwise, in the claim of La Abra Silver Mining Company against Mexico, to support which my testimony is here given, and I am neither agent or attorney for said company, nor for any person having such interest. And further deponent sayeth not.

(Signed,) FRANS F. DANA.

Sworn to and subscribed before me, the 27th day of May, A. D. 1870.

[SEAL OF THE U. S. CONSULATE.] (Signed) ISAAC SISSON, *U. S. Commercial Agent.*

[Here follows the certificate of Isaac Sisson, the United States commercial agent for Mazatlan, to the credibility and respectability of the witness, and that his statements are entitled to full faith and credit; also certifying the lawful taking, and acknowledgment of the affidavit.]

Doc. No. 17.

Deposition of Don Juan Castillo de Valle as to sale of property to the company.

Felipe Villareal, notary public.—I certify, that on this day personally appeared before me, the undersigned, Don Juan Castillo de Valle, a Spaniard, and merchant of this place, personally known to me to be the same, and set forth:

That in September, 1865, he sold to a company styled the "Abra Silver Mining Company," the mining enterprise at the mineral of Tayoltita, district of San Dimas,
72 State of Durango, comprising the mine of the Rosario, in which is included the La "Luz" mine, "El Cristo," Los "Inocentes," and "Arrayan," together with the "Sanz" and "Talpa" mines. The reducing works of "San Nicolas" and Lower Chica for the sum of $50,000, which was paid to him in American gold, to his entire satisfaction. That he also sold the same company the stock and fixtures of the store, for which the payment was made, at $7,000, which was also paid to him in American gold.

Mr. Castillo de Valle further states that, as the lawful attorney of Don Antonio Arayaza, and Don Francisco Yzurieta, he sold to Messrs. Thomas J. Bartholow, J. Garth, and George Griffith, the mining enterprise located in Guarisamey, district of San Dimas, consisting of "Nuestra Señora de Guadalupe del Promontorio," and the reducing works of "Tamborlita de Arriba" and "Tamborlita de Abajo" for the sum of $10,000, which was paid to him, in cash, in American gold at the port of Mazatlan.

That by virtue of these sales, he delivered title-deeds of possession and ownership of the aforesaid mines and reducing works, to their lawful owners, aforesaid, in the presence of José Antonio Aldrete, notary public of Mazatlan.

In witness whereof, Juan Castillo de Valle signs these presents, with me, which I issue at the request of A. W. Adams, a citizen of the United States, and attorney of said Abra Silver Mining Company, for such purpose as may serve his rights.

Dated, city of Durango, May 9th, 1870.

(Signed) "JUAN CASTILLO DE VALLE," "FELIPE VILLAREAL," *Notary Public.*

(Here follows, in the original on file, the certificate of Jesus Hernandez y Mariu, constitutional governor of the State of Durango, to the signature of the notary, Villereal, dated Durango, May 11th, 1870.)

Doc. No. 15.

In the matter of the Claim for damages of "La Abra Silver Mining Company" against the Republic of Mexico. Deposition of John P. Cryder on behalf of Claimants. To be submitted to the Joint Commission of the United States of America and the United States of Mexico in session at Washington, D. C.

CONSULATE OF THE UNITED STATES, PORT OF MAZATLAN,
State of Sinaloa, Republic of Mexico, ss:

Personally appeared before me, Isaac Sisson, United States commercial agent, in and for the port of Mazatlan and its dependencies, on this 24th day of May, A. D. 1870, at 2 o'clock in the afternoon, at my consular office, in said port, John P. Cryder, who, having been introduced as a witness on the part and behalf of claimants in the above-entitled matter, and having been by me duly sworn according to law, to tell the truth, the whole truth, and nothing but the truth, in relation to the matters and things which he is called upon to testify, makes oath to the following statement, to wit:

My name is John P. Cryder. I am forty-nine (49) years of age. I was born in Calcutta, in British India. I reside, at present, in Limon, district of San Ignacio, State of Sinaloa, Republic of Mexico. My occupation is that of a miner and farmer, and I sometimes practice law, but have not done much of that in this country. At the time of the events about which I am here summoned to testify, I resided, and was doing business temporarily, at Tayoltita, district of San Dimas, State of Durango,
73 Mexico, and was employed there by a mining company called "Nuestra Señora de Guadalupe Gold and Silver Mining Company," whose mines, hacienda, stamp-mill, and other works, were situated about one league from the town or village of Tayoltita.

I was *employed there* as one of the assistant superintendents of said work, and was so employed from January, 1868, or the last of December, 1867, up to about the first of March, 1868, and remained in and about Tayoltita until about the last of March, 1868. I know the mines and mining works of La Abra Silver Mining Company, or I did know them in the year 1868, when I was engaged in business there. They are situated at Tayoltita, in the mining district of San Dimas, in the State of Durango, Mexico. I was engaged for some months as one of the assistant superintendents of the Nuestra Señora de Guadalupe Gold and Silver Mining Company, a neighboring mining company.

John Corell was chief superintendent of our mines and works. They were within a few minutes' walk of La Abra Silver Mining Company's hacienda, stamp-mill, and reduction works. I had a good opportunity to know what was going on there in the winter and spring of 1868.

I was frequently at the hacienda of said La Abra Company's works, and intimately acquainted with Mr. Exall, superintendent of said Abra Company. I know their mines, called "La Luz," "El Cristo," "Sanz," "La Abra," "Rosario," "Talpa" or "Tapia," and "Arrayan," which belong to that company—all situated within about one league of their hacienda and reduction works at Tayoltita aforesaid.

Their said mines are exceedingly rich with silver, and valuable mines, and their lodes, or veins of abundant supply.

La Abra mine, alone, as it was said and generally believed by good judges there, was worth more money than said La Abra Company paid for all their mines. I do not, of my own knowledge, know the exact amount paid for all of their mines at Tayoltita, but I have heard from good authority at Tayoltita that they paid Don Juan Castillo de Valle fifty-seven thousand dollars ($57,000) for a number of the mines belonging to them; and that they also paid to a Mr. Luce, and one Hardy, of California, thirty-two thousand dollars ($32,000) for La Abra mine; all of their mines, property, and works, possessed under the title of, and were known and called "La Abra," at Tayoltita; said company had there, when I knew them, a large ten-stamp mill, mill-house, mill-races, hacienda, out-buildings, and reduction works of the largest kind.

Their improvements, including stamp-mill, mill-house, mill-races, patios, and other buildings there, must have cost said company, as I should judge, not less than from three to four hundred thousand dollars.

When I left Tayoltita, about the last of March, 1868, said La Abra Silver Mining Company no longer had existence in the said district of San Dimas; they were broken up by the interference and molestations of the Mexican authorities in that district, and the capture of their mule-trains, provisions, and supplies, by the military authorities of the Republic, while said trains were coming up with said supplies from Mazatlan.

I was, myself, a witness to an outrage upon the superintendent of that company, Mr. Charles H. Exall, who was, to my own knowledge, improperly and unlawfully

arrested and imprisoned by the local judge, or "juez" at Tayoltita. I was present when said arrest was made, and I was also present at the hacienda of said La
74 Abra Company when the cause, or excuse was given, which appeared to me like a miserable pretext for said arrest. It was this: Said Superintendent Exall was sitting in his private room at the hacienda, in consultation with some man on private business, when the said "juez" walked into an adjoining private store room, without knocking or being invited in, and Mr. Exall remarked to said "juez" that it was his private store room, and if he, the "juez" wished to see him on business, he, Exall, would go out and see him, or words to this effect.

These remarks were made in a pleasant and gentlemanly manner, which should have given no offense to any reasonable man, but said "juez" remarked that his dignity was insulted, or something to that effect, and that he would have satisfaction, or that he Exall, would hear from him; and about half an hour after the occurrence named I saw an armed guard come with the orders of said judge, or "juez," and arrested Superintendent Exall, and took him before the judge.

I followed him, and I heard the said local judge, Nicanor Perez, order said Superintendent Exall to be imprisoned in the hacienda that night, with a guard over him; and said judge sent for said Exall the next morning to appear before him, which he did, in charge of a guard, and the moment he entered the court-room I heard the said judge call him, Exall, very bad names, and he poured out upon him the most vile epithets in the Spanish language, abusing him in the most shameful manner; all of which Mr. Exall seemed to bear without losing his temper; and said judge, after he had exhausted the vocabulary of abusive epithets, as I thought, then turned to said Exall and announced his determination to carry out the sentence of imprisonment for two months in the common jail at San Dimas, and fifty dollars fine, but at the same time ordered the guard to compel said Exall to go all the way to San Dimas on foot, and not to allow him even to ride his own mule, saying the judge would learn the Gringos (as Americans are called) to treat him with deference and respect. He then ordered said Exall to be locked up that night in Tayoltita in an old uninhabited house that was said to have been occupied by diseased persons. It did seem to me that nothing was too bad for said judge to say and do against said Exall. The next morning I visited said Exall, in company with an Englishman, whose name was James Granger. This Mr. Granger, not being an American, but an Englishman, had some influence with Judge Perez, although he was in the employ of the company, and he was permitted to call on the prisoner. He invited me to go with him, and I did so; we found Mr. Exall, a gentleman of refinement, busily engaged in the work of defending himself from the attacks of millions of fleas. The house where he was confined had a most disgusting smell, and was filthy beyond description.

It was said by the people there that this old house had been but recently occupied by persons of loathsome diseases, and that the judge knew this fact when he sent Mr. Exall there.

This seemed to create so much sympathy and feeling at Tayoltita in favor of Mr. Exall, even with those natives and unemployed workmen who were in favor of driving said company away from the country, that Mr. Granger managed, with some influences unknown to me, and by securing the payment of the fine, to get Mr. Exall released from this vile prison house; and I do not know what became of the case after that.

I spoke and understood the Spanish language, well, at that time, and have so spoken and understood Spanish for nine years last past. I know, and have
75 talked with Judge Soto, Guadalupe Soto, of Tayoltita. In the winter of 1868, I heard said Soto say that he was in favor of driving said La Abra company out of Mexico, and all the rest of the Gringo companies. He was intimate with the prefect, in 1868, Macario Olvera, and it was said that Olvera, the prefect, was engaged to be married to the daughter of said Judge Soto, and that said marriage did take place subsequently, but of the last-named facts with regard to said marriage, I have no personal knowledge.

I heard said local judge, Nicanor Perez, say he would "run that La Abra Silver Mining Company out of Mexico." He said that "the mines of Mexico belonged to Mexicans," and that his Government had no right to permit the "Gringos," as he called Americans, "to come here and carry off all the best of their metals," and that "the people," he said, "would take care that the ores of La Abra mines don't go away in the hands of these Gringos," and he, the judge, Nicanor Perez, would see that the people of Mexico shall have the benefits of these locos ('fools') investments.

I recollect that his remarks were made in a prejudiced and determined manner, and in the form of a threat, that he would encourage any act, if necessary, to carry his point against that company, and I so understood it, and communicated the facts to some of the American employees there. This was in February, 1868. I afterwards told Mr. Exall of the threats of the juez.

I also heard Macario Olvera, the prefect or Gefe Politico of the district of San Dimas at that time, February or March, 1868, say that "La Abra Silver Mining Com-

pany could not stay in that district;" that "it would be impossible for them to do so." This was at San Dimas; he did not say, positively, what course he would pursue, but he said the authorities were determined to get rid of that company, and they could not stay there and work those mines; he said it would be better for that company to give up their mines and leave the country "before any accident should happen," for which, he said, "the prefect would not be responsible." I asked him what he meant by making use of the word "accident," in that conversation, and he made an evasive reply which satisfied me that mischief was meant, either by the prefect himself, or by the people or local authorities, with the acquiescence of said prefect. This said Macario Olvera was, at the time this conversation took place, February or March, 1868, the official and acting prefect of that district. He was called "Gefe Politico." The Gefe Politico of a district, in any part of Mexico, is the chief authority, civil, military, and political. I know a man must possess great nerve if he dares to oppose the will of the "Gefe Politico," in any district of this country. The intimations of difficulties, or "accidents," made by said Gefe Politico against La Abra Silver Mining Company, were made in the presence of two or three Mexicans, who evinced immediate approval of said remarks, and considerable of feeling. My suspicions were at once aroused, that Superintendent Exall might be in great danger, and that other "accidents" might happen, and I told Mr. Exall, the first time I saw him after this conversation I have related with said prefect.

It was rumored, and indeed reported by nearly all Mexicans at Tayoltita, and San Dimas, that said La Abra Company, and their officers, were in favor of the annexation of Durango, and other western States, to the American Union, and this report was industriously kept up by Mexicans for some weeks before Superintendent Exall abandoned the company's mines and property, and the feeling there with Mexican
76 authorities seemed to be hostile, and I was satisfied that said company could not stay there, and work their mines, with safety to life or property.

There was no truth in the report, circulated so industriously by Mexicans, that this company, or any of its American employees, were in favor of annexation, or that any of them had ever interfered politically, or even discussed that question, so far as I could find out, and they all denied, to me, having any such ideas, and treated the matter as ridiculous when I told them of the bitterness of the Mexicans aforesaid, on that subject; and the superintendent said it was a falsehood, and a mere pretext by which the authorities could excuse themselves for driving the company away from the country, and get their property. I have no interest, direct, contingent, or otherwise in said claim, to support which my testimony is here given. I am neither agent nor attorney of said company, nor for any person having such interest.

(Signed) JOHN P. CRYDER.

Sworn to and subscribed before me, this 24th day of May, A. D. 1870.

Witness:

(Signed,) ISAAC SISSON,

[Seal of the U. S. Consulate.] *U. S. Comm'l Agent.*

REPUBLIC OF MEXICO, STATE OF SINALOA,

Port of Mazatlan, Office of the U. S. Consulate, ss:

I, Isaac Sisson, commercial agent of the United States of America, in and for the port of Mazatlan and its dependencies, in the Republic of Mexico, do hereby certify, that John P. Cryder, whose deposition is hereinabove contained, attended before me, at the office of the United States consulate, in said port of Mazatlan, Mexico, on this, the twenty-fourth day of May, A. D. eighteen hundred and seventy, and that he was publicly and duly sworn by me according to law, to tell the truth, the whole truth and nothing but the truth, and thereupon he deposed and testified, in answer, as hereinbefore set forth; that said deposition was carefully read by me to said John P. Cryder, and that he thereupon confirmed and signed the same in my presence. And I do further certify, that I am competent by the laws of the United States of America, to administer oaths, and that I have special instructions from the Department of State of the United States of America, to take the depositions of witnesses in behalf of citizen claimants of the United States against the Republic of Mexico, to be used in evidence before the Joint Commission of the United States of America and the United States of Mexico, appointed under and by virtue of the convention of July 4th, A. D. 1868.

And I do further certify, that said deposition was reduced to writing by C. Lanusa, in my presence, and that said C. Lanusa has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify, that I know, and am personally acquainted with John P Cryder, the above-named affiant, and I certify to his respectability, and his credibility as a witness, and that his statements are entitled to full faith and credit.

And I do further certify, that I have no interest in the claim to which said deposition relates, and that I am not the agent or attorney for La Abra Silver Mining Company, nor for any person having such interest.

77 Given under my hand and the seal of the consulate of the United States of America, this the 24th day of May, A. D. 1870.

(Signed,) ISAAC SISSON,
[Seal of the U. S. nsulate.] *U. S. Commercial Agent.*

Document No. 24 C.

Deposition of José Maria Loaiza, on behalf of the claimant, to be used before the Joint Commission appointed under the Convention of the 4th of July, 1868, now sitting at Washington, D. C.

UNITED STATES CONSULATE, PORT AND CITY OF MAZATLAN,
State of Sinaloa, Republic of Mexico, ss:

Before me, Isaac Sisson, commercial agent of the United States for the port of Mazatlan and its dependencies, in the Republic of Mexico, personally appeared José Maria Loaiza, who, having been duly sworn according to law, to speak the truth, the whole truth, and nothing but the truth, as a witness on behalf of the Abra Silver Mining Company, the aforesaid claimants, deposed as follows, in reply to the following interrogatories, which were read to him:

1st question. What is your name; how old are you; where were you born; where do you reside, and where did you reside and what was your occupation during the summer of the year 1865, and up to about April of 1868?

Answer. My name is José Maria Loaiza; I am forty-four years of age; I was born at the town, and in the district of San Ignacio, State of Sinaloa, Mexico, where I have constantly resided with my family, during the last sixteen years, in my own house and on my own lands. My occupation has been that of a miner, muleteer, and merchant. During the last five years I have been a merchant and a muleteer, and have transported machinery, provisions, and other articles for the mining companies, to different parts of Durango and Sinaloa; have purchased provisions and other articles for the mining companies, and transported them, upon mule trains, to their places of business at the mineral of San Dimas, and other mining towns in the States of Sinaloa and Durango, in the Republic of Mexico. I performed this kind of service for the Abra Silver Mining Company, particularly during the years 1865, '66, and '67, and the beginning of 1868.

2d question. Do you know the company, called the "Abra Silver Mining Company," and their mines and property? If yea, then state what they did, or caused to be done; whether they did anything, or caused anything to be done, and all you may know concerning the said company; where their mines were located, what you may know concerning them; the preparations made by them to work them, and the particulars of their mining operations, if you know the details?

Answers. I am acquainted with some members of the "Abra Silver Mining Company," and am well and intimately acquainted with three of the principal superintendents, General Thomas J. Bartholow, Col. de Lagñel, and Chas. H. Exall.

The company employed me, at different times, from the end of 1865 up to about the end of March, 1868, when the company was compelled to abandon its mining operations at Tayoltita. I know the mines belonging to the said company, which are located at, or very near Tayoltita, in the mineral of San Dimas, in said district, State of Durango, Republic of Mexico.

78 I am well acquainted with the greater part of the mines belonging to the said company, and have witnessed frequent assays made of the ores, which were very abundant and rich in silver, with a small percentage of gold. The mines which I have examined, and am personally acquainted with, belonging to the Abra Silver Mining Company, while I was employed by them, are "La Luz," "El Rosario," "El Cristo," "La Abra," "Arrayan," and "Talpa," or "Tapia," as this last was usually called. I believe that they are all valuable mines, and yield, as I am informed, from 3 to 6 marks per carga. Of course, some yield much more in certain parts of the veins; but the aforesaid I consider a just average, and I believe that the Abra, and Rosario mines, with a properly constructed adit, would give an average of double, or, perhaps, treble the said quantity of pure silver.

The Abra Silver Mining Company employed me to assist John Cole, of Camacho, and others, in transporting their heavy machinery, and their large and costly ten-stamp mill, from Mazatlan to Tayoltita, San Dimas, which was done upon mules,

which is a slow and costly mode of transportation, over rocks and mountains, full of precipices, a distance of 65 leagues in the dry season, and 73 leagues in the rainy season, when we were compelled to transport the ten-stamp mill, machinery, and other articles, across mountains, thousands of yards high, and over the most dangerous roads I have ever seen.

I know that the said company expended large sums of money in transporting the machinery and implements from Mazatlan to their mines in Durango, and I think that they employed from one hundred to one hundred and fifty men in the works, at their mines underground, and in repairing the reducing works, and preparing their mining operations, on a grand scale; they must have expended, in my judgment, from the cost of the material, implements, and the cost of transportation to their mines, and in the extraction of the great quantity of ores, which they left abandoned at the reducing works at Tayoltita, not less than half a million of dollars, and perhaps much more. The said company employed me to purchase and transport to Tayoltita, 200 cargas of salt, for the operators of said company, which I purchased and transported to Tayoltita. I also purchased for the said company, and carried to their mines, large quantities of corn, meat, lard, sugar, and other provisions, during the years 1865–66, and part of the year 1867.

I also know what the said company did, and how they were treated by the Mexican civil and military authorities. Many of the mule trains, belonging to the said company, were captured by the Republican army, under the command of General Corona, and kept for the use of the said army.

I know that they took, as I have stated, one of the trains which was carrying provisions for the company, and it is also supposed that they robbed it and killed the muleteer, as he has never been heard of since.

This depredation occurred while Thomas J. Bartholow was superintendent of the company, at the end of 1865, or the beginning of 1866. A short time afterward, one Grove, the muleteer of another train, employed by the company, was found brutally murdered by the people of the country, on the road to the mines where he was going, at a place called "El Arroyo del Candelero," between San Ygnacio and San Dimas, where his body was found, horribly mutilated.

79 I have heard of other trains of mules, which were employed by the company, as having also been taken by the said forces for the use of the army, but I cannot say how many trains they took in all, because I do not know.

I have heard parties whom I knew as officers and soldiers of the said army, laughingly say, that the Abra Silver Mining Company was a very good provider and quartermaster for supplying the army, and I am confident that they participated in the said depredations, or robberies. The company must have lost a large amount by these captures, but I do not know how much.

I know that when the company abandoned their mines and mining property, in the spring of 1868, that they had extracted a great quantity of silver ore—I believe from 1,000 to 1,500 tons—and that these ores, and also the reducing works, the mill, the mill-houses, the laborers' houses, the appurtenances of the mill, tools, &c., &c., were abandoned by the company in March of 1868.

I also know that the company constructed very expensive conduits for water, and other necessary works for the proper working of the said mines.

3d question. Do you know any other reasons than those already stated by you, why the said company abandoned their mines and property? If so, state what you may know upon the subject.

Ans. Yes; I know from what was commonly reported at the time of their abandonment, and from the boasts made by some of my countrymen, of whose conduct I am greatly ashamed. I know that it was frequently stated by the Mexicans, and the authorities of San Dimas and the neighborhood, in 1866 and 1867, while I was working for the company, that they would drive the company away—that they would drive them from their mines, and obtain the benefit of their expenditures. I frequently censured my countrymen when I heard these threats, and they often answered me that they would kill me, or drive me away with the Americans, if I took their part, or talked about the matter.

I heard Marcos Mora, who was at that time gefe politico of the district of San Dimas, say that he would drive the Abra Silver Mining Company away from the San Dimas mines. This conversation took place at Tayoltita, near the reducing works, and I believe that it was at the end of 1866, or the beginning of 1867. I know that it is a fact, that there was a firm determination existing upon the part of all or nearly all, of the authorities of the district of San Dimas, to get rid of the said company. I know this from my frequent conversations, and the expression of the opinion of the people and the authorities, while I was employed by the company in transporting provisions and other articles for them, as I have stated.

I did not approve of this conduct towards the American Company, who had, in good faith, come to invest their capital, and develop the riches of our country, but

at times I appeared to approve, or rather allowed them to think I approved their evil plans against the Americans, in order to ascertain the reality of their intentions, and what might be the results to the company. I have heard the stepdaughter of Guadalupe Soto, the judge conciliador of Tayoltita, say, that she had also heard Marcos Mora, who was, at that time, gefe politico of the district, make these threats, and also her stepfather, who was the local judge of Tayoltita; but she said that her stepfather was a strong friend of General Thomas J. Bartholow, the first superintendent of the company, and, if it were not for this, that he, too, would have assisted in driving away the company, and that when Bartholow, the superintendent, was succeeded by another, that the judge strongly favored the plans of the gefe politico
80 of the district, to drive the company away, take possession of their property, or place Mexicans over it. This lady, yesterday, here in Mazatlan, again repeated to me what I have just stated, and from all of the facts in my possession, as to the jealousy and dislike of the authorities and of the people towards the Abra Silver Mining Company, I am perfectly convinced of the truth of her statement.

4th question. Do you know, and can you swear to the handwriting and signatures of Marcos Mora, ex-gefe politico, or prefect of the district of San Dimas?

Ans. Yes; I know both his handwriting and his signature, which I have frequently seen in his official orders.

5th question. Is this order, or paper, in the handwriting of the said gefe politico, Marcos Mora, and do you recognize the signature to the said order as the genuine official signature of the said gefe politico, or prefect?

(The witness was here shown, by the consul, exhibit marked "X," with the consular seal affixed to the said order, and dated at San Dimas, July 10th, 1867, signed—"M. Mora.")

Answer. Yes; I recognize this paper; it is an order of the said Marcos Mora, given in his official capacity, and the whole of it, and the signature is, indubitably, the genuine handwriting and signature of the said Mora, who was, at the date of the said order, gefe politico, or prefect of the said district of San Dimas, and was so known and acknowledged by all persons residing there at the time.

6th question. Here are two other orders, or communications; do you recognize the handwriting and signature of either or both of them? and if you do, state whose handwriting it is, and whose signature appears at the foot of it?

(The witness was here shown, by the consul, exhibits marked "V and W," dated at Tayoltita, respectively, on the 4th and 24th of July, 1867, both having the consular seal of the United States attached to them.)

Ans. Yes, I recognize both as official documents of Guadalupe Soto, who was, at that time, and is now, judge conciliador at Tayoltita. Both are in his handwriting, and the signature is, indubitably, his, and the same as he uses in his official acts.

7th question. Were you acquainted with the late gefe politico of the district of San Dimas? and if you were, state, if you know, what were his connections with the family of the said Judge Guadalupe Soto, and anything else you may know with regard to his official conduct towards the Abra Silver Mining Company, as also that of Guadalupe Soto?

Ans. Yes, I knew the late prefect, or gefe politico of the said district. His name was Marcario Olvera, and he was killed, a few weeks ago, at San Dimas, in a quarrel with his own town's people. I believe that he was married to one of Judge Soto's family, at least it was so said and believed in the district. He was a great friend of Judge Soto, and I have heard him tell Olvera, the prefect, that they would never allow the Abra Silver Mining Company to renew their mining operations in the district. This occurred, it appears to me, during the rainy season, or summer of 1868, on the road near San Dimas, where I met him on horseback; it might have been, perhaps, in October or November of that year. I have also heard Guadalupe Soto
81 express himself in bitter terms of the Abra Silver Mining Company; and in the spring or summer of 1867 I heard him say that he was glad that the company was out of the country; that the Mexican Government had no right to permit the Gringos to hold the best mines in the country; that the mines in Mexico belonged to the Mexicans, and that all the —— foreigners should be driven out of the country, and the mines be given back to the Mexicans. I recollect nothing further upon the subject.

8th question. Have you any interest, positive or contingent, or of any other kind, in the claim of the said company, in whose behalf you have given this deposition, or are you the agent or attorney of the company, or of any person who has any such interest?

Ans. I have no interest of any kind, positive or contingent, in the company's claim, nor am I the agent or attorney of the company, or any person who has any interest.

Adding, that I speak English sufficiently to understand and to make myself understood in conversation, as I have resided several years in California; but as I have been told that it is the same whether I made my deposition in English or Spanish, I

have preferred doing so in the latter language, although I have confidence in my knowledge of that language, and in Carlos F. Galan, the translator.

(Signed.) JOSÉ MARIA LOAIZA.

Subscribed and sworn to before me on this 14th day of May, 1870.

(Signed.) ISAAC SISSON,
United States Commercial Agent.

[Seal of U. S. Consulate.]

[Here follows, in the original, the affidavit of the translator, Carlos F. Galan, to the proper and lawful taking of the foregoing deposition, and to the signing of the same.]

[Here follows, in the original, certificate of the United States Consul, to the proper taking of the foregoing deposition, and to the responsibility and credibility of the witness, Loaiza. W. C. T., official translator.]

[Seal of U. S. Consulate.]

Doc. No. 22.

La Abra Silver Mining Company against The Republic of Mexico. Deposition of Charles Bouttier on behalf of claimants. Respectfully submitted to the Joint Commission of the United States and Mexico, in session at Washington, D. C.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Charles Bouttier, being duly sworn according to law, to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows, to wit:

My name is Charles Bouttier; I am forty years of age; I was born in Havre, in the Empire of France; I have resided in the United States of America for more than twenty years last past; I now reside in the city and port of Mazatlan, State of Sinaloa, in the Republic of Mexico; I have resided in Mexico for about sixteen years last past.

82 I know "La Luz," "El Cristo," "Sanz," "Talpa," "La Abra," and other mines at and near Tayoltita, in the mineral district of San Dimas, in the State of Durango, Mexico. I have been upon the ground, and have thoroughly examined those mines, and have tested their ores, with a view to making a purchase of the same, if possible. I examined them in the winter or spring of 1868.

I know the officers of the company who own those mines; I also know some of the owners, and especially General Thos. J. Bartholow, of Saint Louis, Missouri, and David J. Garth, of New York. I became acquainted with said Bartholow while he was acting as superintendent of said mines, in 1865 and 1866. It was in the early part of 1866 that I knew said Bartholow, at Tayoltita.

The company was called the "La Abra Silver Mining Company," and, as I understood, was organized under the laws of New York.

I saw a fine stamp-mill, and heavy machinery for the same, being transported to said company, on the backs of mules, under the superintendence of said Bartholow. I saw large trains of mules, loaded with said machinery, on the road between Mazatlan and San Dimas, and I also saw large trains loaded down with provisions and supplies for said company, at various times during the latter part of 1865, and during the years 1866, 1867, and 1868, up to the winter of the latter year; and I have heard from good authority that said company had some of its mule-trains and supplies captured or stolen by the troops of the Liberal or Juarez army, and that one or two of the officials in the employ of said company were killed by said troops in the work of securing their plunder or the supplies of said company. I know that those captures, or robberies as I should call them, were notorious at that time, and that the murder of Mr. Grove and another officer in the employ of La Abra Silver Mining Company, while attempting to defend the supplies under his charge at the time, whose name I have now forgotten, were freely talked of and generally understood in that part of Mexico, and I have heard Mexicans justify the acts I have named and say that it was a military necessity, and if the officer in charge of the provisions and supplies refused to give them up when the same were so much needed in the army, the troops did perfectly right to kill him and take the provisions.

There was very little feeling there on the part of Mexicans for American citizens and no regard paid to their interests. I have frequently heard Mexicans boast of having taken a hand in driving away La Abra Silver Mining Company from the mineral district of San Dimas. That company was very unpopular there, and they were much hated by Mexicans. I do not know of any cause for this hatred of the

company, except that said company had made large investments in the said district, and had put up the said machinery, and were preparing to carry on mining on an extensive scale, at Tayoltita, which seemed to create a feeling of prejudice and jealousy with Mexicans in that district, and I have frequently heard Mexican citizens at Tayoltita say, in the winter of 1868, that they would have that company driven out of the district.

I heard the prefect, Macario Olvera, say that it would be impossible for La Abra Silver Mining Company to stay there; this winter of 1868—I think in or about the month of February; it might have been as early as the last of December, 1867, or January, 1868. I do not recollect the exact date, but it was in the winter of 1867–1868.

83 It was the report at Mazatlan that said company was to be drived out of the mines, which caused me to visit Tayoltita, in the winter of 1868, with a view to the purchase of them, before any other party should get hold of them, either by purchase or denouncement, and when I made the acquaintance of Mr. ———, the superintendent, that winter, I very soon satisfied myself that they would be driven away, sooner or later, and I then went to the prefect to see what would be done, and he told me that the authorities there did not like La Abra company nor its officers, and that the company had better leave there soon or they would be driven away. He said he had advised some of the officers to quit and give up their mines, for if they did not he, the prefect, would not be responsible for consequences, etc.

I spoke to Mr. about purchasing La Abra property and mines, and he said he had no authority to sell or dispose of the property or mines, but that I had better communicate with the company, at New York.

After my second interview with said prefect, however, which took place immediately after I had talked with Mr. about the purchase, I became well satisfied, from the intimations given me by said prefect, of the "storm that was gathering around that company," as he called it, that the company would soon be dispossessed by force, and that they *would have nothing to sell.*

When I first went to Tayoltita, that winter, I tested, very thoroughly, the quality and supply of the ores of "La Abra," "La Luz," "Rosario," and "Talpa," and I partially investigated the value of the ores of the " ," and "Sanz" mines, all of them belonging to said company, as I know, for I have seen the titles on record, at San Dimas, (the denouncements,) and at Durango and Mazatlan.

The reason I investigated these mines, and the title to them so particularly, was, because I desired then to purchase them, in connection with other gentlemen who wished to form a company to work them, with me as superintendent.

The result of my examination of these mines, was, that I found "La Abra" almost an inexhaustible mine of rich ores, which, however, will require a large capital to work it profitably, as it should, in my judgment, be tunnelled, at a heavy expense, of course.

The ores I took from that mine were very rich of silver, and I am satisfied, if tunnelled, the ores would yield an average of, at least, six hundred dollars per ton, and perhaps more than that amount. The ores I tested averaged more than that average.

I also tested the other mines named, in the same way, and the ores of the others tested, beneficiated me at the rate, or average, of about four hundred and seventy-five dollars per ton ($475). I consider all of those mines exceedingly rich, and abundant in supply. La Abra property, altogether, is one of the most valuable properties in that district.

I saw, too, that it would require a large outlay of money to properly develop those "hidden treasures," for it is believed by all the skilled miners, of whom I consider myself one, that La Abra mine alone, is worth, to any company able to tunnel it, not less than a million of dollars. I believe the property of that company was, in the winter of 1868, worth largely more than two millions of dollars, including the large piles of rich ore they had taken out, which I saw there, piled up back of the hacienda of said company.

My profession is that of a miner, and has been so for twenty years, nearly. I am also a physician, and practical chemist, and I flatter myself that I possess
84 some knowledge of silver mining, having been engaged in that business for many years last past.

I have often been called upon to test the quality and supply of the ores of silver mines, both in the States of Durango and Sinaloa.

I was part owner, and worker of a mine, as superintendent, in the mineral district of Copala, in the State of Sinaloa, but was compelled to quit and abandon the same, by acts of the Mexican authorities, in the year .

I have no interest in the claim of said company against the Mexican Republic, to support which my testimony is here given; and I am not the agent or attorney of said company, nor for any person having such interest.

And further deponent saith not.

(Signed,) CHARLES BOUTTIER.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Michael Meagher, a notary public of California, in and for the city and county of San Francisco, duly appointed, commissioned, and qualified, do hereby certify, that on the fourteenth day of July, A. D. one thousand eight hundred and seventy, came before me, at my office, in said city and county, Charles Bouttier, who being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, did, under oath, depose and testify as set forth in the foregoing deposition; that the same was committed to writing by Wm. W. Lawton, who has no kind of interest in the claim, and that it was carefully read over by me to said deponent before signing, and thereupon the same was signed by him in my presence; and that I know the credibility of said deponent, and that he is a credible witness.

And I further certify, that I am competent to take depositions, by the laws of the State of California; that I have no interest in the claim to which said testimony relates, and that I am not agent or attorney of any person having such interest.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate written.

(Signed,) MICHAEL MEAGHER,
Notary Public in and for the city and county of San Francisco, California.

[Notarial seal.]

[Here follows, in the original, the certificate of Lorenzo S. B. Sawyer, clerk of the Circuit Court of the United States for the district of California, that said Michael Meagher was, at the time of executing the foregoing deposition, a notary public of the State of California, and certifying to his signature and seal as such, and that his acts are entitled to full faith and credit.]

[Seal of Clerk of Circuit Court of U. S. for California.]

Taken in 1872. **Declaration of Juan Castillo De Valle.**

DURANGO, *June* 24, 1872.

To the First Judge of the Department of the Capitol:

A. W. Adams, a citizen of the United States, attorney-in-fact of La Abra Silver Mining Company, appears before you, and sets forth, that the rights of the said company require that you be pleased to examine, under protest of law, and in due form, Juan Castillo De Valle, in accordance with the interrogatory hereunto annexed, as I respectfully ask you to do, and that, after taking his deposition, the original be returned to me, to be presented to the Joint Commission now sitting at the city of Washington under the treaty made between the United States and Mexico, on the 4th of July, 1868.

Addenda.—I further state, that the present is accompanied by the power of attorney referred to at the beginning of this petition, which, after having been recorded, I request you to return to me, as it is a general one.

I pray you to grant my petition, which is just.

(Signed,) A. W. ADAMS.

[Here follows, in the original, an entry of the presentation of the foregoing, on the 26th of June.

(Signed,) BARRAZA.]

[Here follows an order of the court, dated Durango, June 26th, 1872, directing the depositions to be taken as requested, which, being done, it to be returned to the petitioner. Make a record of the power of attorney now, and return it.

(Signed,) BARRAZA.

JESUS GOMEZ.
FERMIN MONRIEL.]

[Here follows an order of the notification of the above order to General A. W. Adams.]

[Here follows an entry of the record of power of attorney, as follows:

"The power of attorney presented by A. W. Adams, a citizen of the United States, is executed in his behalf, in the city of New York, on the 11th of March, in the present year, before Henry Snell, a notary public, by George C. Collins, as president of the American mining company called 'La Abra Silver Mining Company.' It is gen-

eral, and contains special clauses to go to Mexico to obtain proofs in favor of the said company, in the matter of the claim which the said company have before the Joint Commission now sitting in the city of Washington, under the treaty between the Republics of the United States and Mexico, and also to obtain the title-deeds and other documents referring to the property of the said company, from the bureaus of the States of Sinaloa and Durango. The power is certified to by Juan Navarro, the consul general of the Republic of Mexico, in the United States, at the city of New York, on the 12th of March of the same year. Entry of it is here made, and it is returned.

"(Signed,) PEDRO J. BARRAZA.

"DURANGO, *June 26th*, 1872.
"FERMIN MONRIEL. (Signed.)
"JESUS GOMEZ." (Signed.)]

[NOTE.—Owing to the length of the interrogatory, and with a view of facilitating the reading of it, and the deponent's answers, the answers are inserted after, and in reply to each interrogatory.

W. C. T., *Official Translator.*]

Interrogatory for the examination of Juan Castillo De Valle, in the matter of La Abra Silver Mining Company vs. Mexico.

1st. State your name, age, place of birth, employment, and residence?

Ans. My name is as before stated; I am of age; a native of Spain; a widower, a merchant, and resident of this place.

86 2d. State whether you know the American mining company called "La Abra Silver Mining Company," of New York. If you do, state whether you sold or transferred, under an indisputable title to the said company, at the mineral of Tayoltita, in the district of San Dimas, State of Durango, the mines called "Nuestra Señora del Rosario," "La Luz," "El Cristo," "Los Santos Ynocentes," and part, or say five hundred and fifty feet, of the "Nuestra Señora de Guadalupe" mine, or whether you sold them to some other person for the said company? and if you sold them, for what amount did you sell them; when, where, and by whom was the money for the said mines paid?

Ans. I know of the existence of that company, as I am acquainted with some of the members of it, such as Mr. Thomas J. Bartholow and David J. Garth, to whom I sold the mines referred to in the question, for the said company, for the sum of fifty thousand dollars, which I received, to my entire satisfaction, at Mazatlan, and delivered them the title-deeds of the property and the possession which I had acquired, under full legal title.

3d. State whether you know the company called the "Nuestra Señora de Guadalupe Silver Mining Company"; and if you do, state where the mines were, and where they were working? who sold the company their mines, and what were the names of the same?

Ans. I know the Nuestra Señora de Guadalupe Company referred to in this question, which was working at Tayoltita, in the district of San Dimas, State of Durango; it was represented by Messrs. John Cole and John J. Correll, who worked the mine which bore the same name as that of the company which the deponent and his partner, Ygnacio Manjarrez, transferred to them to work, reserving only five hundred and fifty feet, which they subsequently sold to "La Abra Company," as stated in my previous answer.

4th. State whether the mines sold La Abra Silver Mining Company and "Nuestra Señora de Guadalupe Silver Mining Company" were duly and lawfully denounced by yourself; whether you were "given legal possession of them;" and if so, state whether the titles to the mines, or any part of them, passed from your possession previous to the sale of them to said company made by you?

Ans. All the mines before referred to were transferred to the companies under legal titles of possession, and no other person, from the time that I acquired them, had any other intervention in the possession or ownership of them, and consequently the lawful titles of ownership passed from the deponent to the said company.

5th. State whether you know that the expedientes of the said denouncements were duly presented to the State Department, at the capital of Durango; and state, if you know, what has become of the denouncements, if they are not there at present?

Ans. That, without having presented the denouncements to the government of the State, it would have been impossible to have obtained the title-deeds of possession, which I delivered when I made the sale to the company; and if the denouncements are not to be found in the archives, I do not know where they they are to be found.

6th. State when you were residing at San Dimas and at Tayoltita, and whether during this time your property and person was duly protected by the Mexican authorities in that district?

Ans. I resided at the minerales of San Dimas, and Tayoltita, from the year
87 1846 up to 1865, and that in the year 1856 the town of San Dimas mutinied against me, murdered my brother, left me, the deponent, for dead, pillaged my house, and the authorities were unable to prevent it.

7th. State whether your brother was killed, and you yourself dangerously wounded at San Dimas by the same Mexicans who killed your brother, all by want of due protection from the authorities?

Ans. My reply to the previous question is an answer to this one.

8th. State whether the Republican Government of Mexico arranged with you, and agreed to pay you for the damages which you suffered at the hands of the said Mexicans at San Dimas, by reason of the want of protection; and if so, state what amount the Mexican Government agreed to pay you for such damage?

Ans. The Mexican Government agreed to pay the loss and damage sustained by the deponent, but no amount was fixed upon for the damages referred to in the question.

9th. State whether, at the time of the death of your brother and you yourself were wounded, you were working the mines which you sold to La Abra Silver Mining Company, or David J. Garth and Thomas J. Bartholow for the said company; and if so, state whether the principal inducement you had for selling the mines and leaving the district was the want of protection to your person and property by the Mexican authorities at that place?

Ans. That at the time of the occurrence referred to, I was working some of the mines sold by me to Thomas J. Bartholow for La Abra Company, and others I subsequently acquired. In fact, one of the principal reasons which induced me to sell was the want of protection experienced in those sparsely populated places, and which are distant from the superior authorities of the State.

10th. State whether the foreigners engaged in mining in the district of San Dimas have experienced the protection promised by President Juarez, in his proclamation in which he invites the investment of foreign capital?

Ans. That he does not know what promises President Juarez may have made to foreigners, in the proclamation referred to in the question, and as deponent left San Dimas in 1865, when he sold the mines, he does not know what protection may have been given to them.

11th. State whether you have heard it publicly reported that Marcos Mora, who was gefe politico at San Dimas, in 1866 or 1867, was strongly prejudiced against "La Abra Silver Mining Company," and "Guadaloupe Silver Mining Company," and endeavored to drive them out of the country, and whether Macario Olvera, who was gefe politico in the same district, in 1868, was of the same way of thinking?

Ans. He answers this question in the affirmative, as far as relates to Marcos Mora, as he knows that he was very badly disposed towards the company in question, that he even went so far as to say to the deponent that it was necessary to break these companies up, and drive them away from there; that with regard to Macario Olvera, he knows nothing.

12th. State whether you know William H. Smith, the owner, and the party who worked a mine at Tayoltita, called the "Tecolote;" and if you knew him, state whether you commissioned him to sell the mines which you afterwards sold to Messrs. Garth and Bartholow, and which subsequently became the property of the said Abra Company?

88 Ans. I was perfectly well acquainted with William H. Smith, the owner of the "Tecolote" mine at Tayoltita; I gave him the commission referred to in the question, all of which I answer in the affirmative.

13th. State at what price you limited the sale of the said mines, in the commission given to the said Smith, and whether it is true that the said Smith was instructed by you not to sell the mines for less than one hundred and fifty thousand dollars?

Ans. In fact, the instructions given to Mr. Smith, for the sale of the mines, fixed the price of them at more than one hundred thousand dollars, but I do not recollect whether the price fixed was exactly one hundred and fifty thousand dollars.

14th. State whether you consider that you sold the said mines to Messrs. Garth and Bartholow at a very low price, in view of their real value, the price of sale having been fifty thousand dollars?

Ans. That in fact the mines referred to in the question were sold to La Abra Company at an exceedingly low price.

15th. State whether it is true that you were induced to sell the said mines at this low price principally because you thought that your life and property were not safe in the district of San Dimas, because the local authorities did not give you, and other foreigners, due protection, on account of the depredations committed by the military authorities of the Republic, who with armed forces passed through Tayoltita and San Dimas, during the war against the Maximillian empire?

Ans. That in fact he was induced to sell the mines in question for the reason stated in the question.

16th. State whether you consider the said William H. Smith, of the Tecolote mine, at Tayoltita, to be an honest and an honorable man?

Ans. I consider William H. Smith to be an honest and an honorable man.

17th. State if it be true that the said mines, belonging to La Abra Company, were previously worked with great success by the celebrated Zambrano; and if said mines are mentioned by Baron Von Humboldt, and also in Ward's celebrated work on Mexico; and whether it is publicly well known that the old reducing works and aqueducts there were constructed by the same Zambrano?

Ans. In the affirmative.

Question by the Court:

Have you any interest in this matter, or in the claim made by La Abra Silver Mining Company against Mexico; or are you the attorney, relative, or friend of any of the claimants?

Ans. I have no interest whatever, nor is there any legal impediment to my deposition.

With which the present deposition was closed, and the witness confirmed and ratified it, signing with the judge and attending witnesses.

(Signed) PADRO J. BARAZA.
" JUAN CASTILLO DE VALLE.

FERMAN MONREAL. (Signed)
JESUS GOMEZ. "

80 DURANGO, *June* 27, 1872.

To the First Judge of Letters to the Department of this Capitol:

A. W. Adams, a citizen of the United States, at present residing in this capital, as attorney-in-fact of La Abra Silver Mining Company, as I have accredited before you, respectfully requests you to certify, whether Juan Castillo de Valle is one of the principal merchants in this city; whether he is publicly known to be an honorable man, and whether his testimony is worthy of credence, as I require such a certificate as to the value of Mr. Juan Castillo de Valle's deposition, given before you.

I beg you to accede to my petition, which is just.

(Signed) A. W. ADAMS.

DURANGO, *June 27th*, 1872.

[Here follows an order of court, directing the certificate asked for in the foregoing petition, to be given, and the original to be delivered to the petitioner.

(Signature) W. C. T., *Official Translator.*]

[Here follows an entry of the notification of the foregoing order to A. W. Adams.

W. C. T., *Official Translator.*]

I, lawyer Pedro J. Barraza, first judge of letters, of the department of this capitol, under legal protest, and in due form of law, do hereby certify, that Mr. Juan Castillo de Valle is one of the principal merchants in this city; that he is a man well known for his honor and integrity, and that his testimony is, beyond doubt, worthy of credence.

And at the request of A. W. Adams, a citizen of the United States, I issue the present certificate at the foot of his petition, on two leaves of paper, bearing the third seal, and for the uses and purposes stated in the said petition.

Signed, on this, the 27th day of June, 1872, at the city of Durango.

(Signed,) PEDRO J. BARRAZA.

We, the undersigned, notaries public, do hereby certify, that the signature affixed to the foregoing deposition, dated the 27th day of June, 1872, is that of Juan Castillo de Valle, a Spanish subject, a merchant and resident of this place, whom we certify to knowing as a person of good character and repute, and that the signature which witnesses the said deposition, is that of lawyer Pedro J. Barraza, the judge of the first criminal court, and in the exercise of civil jurisdiction; and we further certify, that the signature to the foregoing certificate is also that of Judge Pedro J. Barraza.

In witness whereof, and at the request of A. W. Adams, a citizen of the United States, we give the present certificate at the city of Durango, on the 26th day of July, 1872.

(Signed,) JESUS CINCUNEGUI, *Not. Public.*
[*Rubrica.*]
FELIPE VILLAREAL, *Not. Public.*
[*Rubrica.*]

I, General Florentino Carrillo, governor and military commandant of the State of Durango, do hereby certify, that the signatures affixed to the foregoing document,

are those of lawyer Pedro J. Barraza, first criminal judge, and acting as civil
90 judge, and of Jesus Cincunegui, and Felipe Villareal, notaries public, and that the signatures of the same are acknowledged, and entitled to full faith and credit.

And at the request of the party interested, I give the present, at Durango, on 26th July, 1872.

(Signed,) F. CARRILLO.

JOSE PALAS, *Chief Clerk.*

[Here follows, in the original, the certificates of the United States consul at Mazatlan, to the signatures of the governor and chief clerk.

W. C. T., *Off. Translator.*]

Deposition of Jesus Chavarria.

DURANGO, *July* 11, 1872.

To the First Criminal Judge acting in civil proceedings:

A. W. Adams, as the legal representative of the "Abra Silver Mining Company," appears before you, according to law, and respectfully sets forth, that the rights of the parties represented by him require him to request you to summon, and cause to appear before you, Lawyer Jesus Chavarria, and that he give his deposition in accordance with the annexed interrogatories, and that upon the conclusion thereof according to law, he further requests that you will direct that the original be delivered to him for the lawful uses for which it may serve the parties represented by him.

A. W. ADAMS.

DURANGO, *July* 11, 1872.

[Here follows, in the originals, an order of court, directing the deposition to be taken, and Lawyer Jesus Chavarria to be cited to appear at 9 o'clock to-morrow morning, 12th of July, 1872.

(Signed) PEDRO J. BARRAZA, *Judge.*

a FERMIN MINREAL. (Signed) a JESUS GOMEZ.]

[Here follows the entry of the notification of the above to A. W. Adams, a citizen of the United States.

[NOTE.—To facilitate the reading of the testimony, and owing to the length of the interrogatories, which, as usual, are separate from the answers, the answers have been inserted immediately after the questions.

W. C. T., *Official Translator.*]

Interrogatories for the examination of Jesus Chavarria.

1st. State your generalities:

Ans. That his name is, as before stated; of age; married; a lawyer; a resident of this place; and without any further generalities.

2d. State where you resided, and what was your employment, from July, 1865, to March, 1868?

Ans. That now, as during the years referred to in the question, his residence was in Durango; that he was employed in business connected with his profession, and
91 he recollects that he was absent at the department of San Dimas and the Tayoltita mines, on private business, in the month of July, or August, 1867.

3d. State whether you knew the company called "The Abra Silver Mining Company," the claimant in this case, or any of the stockholders or employees, and if you knew any of them, state when and where you knew them; who they were, and how they were engaged, if you know?

Ans. That he knew the "Abra Company," referred to in the question, at the time that he was at San Dimas; that he knew some of the members, such as Charles Exall, at the time stated in the previous question, that is, in July or August of 1867, and that they disappeared from the district in the following year.

4th. State whether you ever visited the Abra Silver Mining Company's mines, reducing works, improvements, and other works; what these mines were, and of what the works, buildings, and improvements of the company consisted; also state, where and how they were situated when you saw them, and give a description of the mines as to their value, and the extraction of ores?

Ans. That in his previous reply he has answered the first part of this question; that the mines were the "Abra," the "Luz," the "Rosario," and others which he does not recollect; that the works consisted of the houses, reducing works, and other edifices adapted to the business; that the mines were of silver, and of great importance for the abundance of their ores and their percentage of silver; that it is impossible for him to give a description of them, as he is not an expert in mining.

5th. State whether you knew Marcos Mora, and if you knew him, what was his political employment from the end of 1866 up to about September of 1867, and who was he?

Ans. That he knew Marcos Mora, as gefe politico of San Dimas, from March of 1867 up to September of the same year.

6th. State under what party and government, both national and State, the said Marcos Mora was acting as gefe politico; also, who succeeded the said Mora in that office, when his successor was appointed, and where did he live when he was appointed?

Ans. That Marcos Mora was acting in that office under the present Federal Government of President Juarez, which was in force, both in the State and nation; that Marcos Mora was succeeded by Macario Olvera, who resided at Gavilanes when he was appointed.

7th. State at what time you were at the Abra Silver Mining Company's mines and reducing works at Tayoltita, and who, if anybody, was with you?

Ans. That he has stated the time when he was at the mines, at Tayoltita, and that Marcos Mora, and the deponent's servants went with him when he wept to see them.

8th. State whether it is true that the said gefe politico, Marcos Mora, was arrested for crime, and tried in this capital, about the month of September, 1867; state what lawyer defended Mora, what offense he was accused of; also state, whether Mora the gefe politico was duly tried by the authorities, evidence upon this subject being considered pertinent and important on the point, as will be seen afterwards?

Ans. That it is a fact, that Mora was tried for misconduct in office; that he was imprisoned and tried in this city, before the second criminal judge; that
92 Mora was further accused of malversion of the public funds, and that deponent was the lawyer who defended said Mora.

9th. State for what purpose you went to San Dimas, or Tayoltita, in July or August of 1867; state all that took place there, the conversations which occurred between the gefe politico, Marcos Mora, and deponent, with regard to the object of his visit to the district at that time concerning the property and damages of La Abra Silver Mining Company; state also what took place between the said gefe politico and deponent, while going to and returning from that place, also what took place between the said gefe politico and the Mexican miners when you visited the mines; houses, &c., &c., at Tayoltita, touching the property or damages of the said company; state all that you witnessed there, relating to this question, and whether the gefe politico's protection was invoked on behalf of the company; whether protection was not given, and state whatever else you may know with regard to this question, whether it was indicatory of a conspiracy on the part of the Mexican authorities, general or local, civil or military, to drive the Abra Silver Mining Company away from their mines and property at Tayoltita?

Ans. That in July or August, of 1867, the year referred to in the question, he was at San Dimas on private business, and also at Tayoltita, as he has before said; that he went to the mines for the purpose of seeing them, and that he conversed with the gefe politico upon their condition; that in consequence of these he became satisfied that both that officer and the mining people were strongly bent upon annoying and driving the Abra Company away, and with which they were continually provoking quarrels; that officer and some of the workmen stated that they believed the company to be annexionists; that it was therefore hateful to Mexico, and they thought it best to drive it way from that mineral, anyhow; that, for this purpose, the authorities instigated the laboring people, on the pretext of their wants, not to work for the company; that he further knew, that the company's ores were frequently stolen, and that it was not legally protected by the Gefetura, where the superintendent usually made fruitless complaints of the thefts; that that officer [the gefe] also gave him, deponent, to understand that he had a special interest in the expulsion and despoliation of the company, in which case he intended to denounce the mines at Tayoltita, and he offered deponent a share in them, which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity, to the great responsibility of the authorities of that department, who, either by their connivance, or indolence, compromised the honor and good name of the Republic.

10th. State whether deponent met Macario Olvera on the road, on his return from Tayoltita to Durango, in July or August of 1867; also state what conversation he had with Olvera concerning the prefect, Marcos Mora, the gefe politico, as to expelling the Abra Silver Mining Company from their mines and works at Tayoltita?

Ans. That he met Macario Olvera on the road, from San Dimas to Gavilanes; that they conversed together upon the subject referred to in the question, and Olvera acknowledged to him the plans and intentions existing at Tayoltita, on the part of the authorities and the operatives, to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist, and that Olvera revealed to deponent that he was interested in
93 that hostility, and in combination with the gefe politico, whom he was going to replace, to carry out the sinister projects before referred to.

11th. State whether Marcos Mora, the gefe politico, was visited on the second night of their stay at Tayoltita, in July or August of 1867, at the house where they were stopping, by any of the employees of the Abra Company, or any of the head Mexican workmen who had been in the employ of the company? Also, state all that then and there took place between the said employees and the gefe, Mora, as to their continuing in the company's service; state what the parties named did, and said, in your presence.

Ans. That all the matters referred to in the question are true; that the greatest disorder prevailed upon that occasion; that the head miners, by order of Marcos Mora, mutined against the Abra Company and the superintendent; they refused to work any longer in the mines, which resulted in the continuance and increase of the robbery of the ores, which was openly carried on, in daylight, and in the presence of the superintendent.

12th. State whether, at Durango, or other places, you have had any conversations with the said gefe politico, Marcos Mora, or his successor, Macario Olvera, since the month of March, 1868, touching the reasons why the Abra Silver Mining Company abandoned their mines and property; and if so, then state all that the said gefes politico told you, and others in your presence, prior and subsequent to the abandonment of the mines, which may throw any light on the subject of the abandonment, and the manner in which this was brought about?

Ans. That subsequent to the time referred to in the question, he conversed with Macario Olvera, in Durango, and also with Marcos Mora, on his frequent visits to him when he was in prison and was told, that the company had finally been compelled to abandon their mines at Tayoltita, through the loss of their property, owing to the concerted hostility against it in March of 1868.

13th. State what was the value of the improvements made by the Abra Silver Mining Company at the time you visited their mines and works, in July or August of 1867? Also the value of the silver ores, which you saw in the company's enclosures, near their pricipal reducing works of San Nicolas; also state your opinion regarding the amount of money which the company may have expended in the improvement and development of the mines, taking as a base for such opinion what you saw when you visited the said mines and works, and the best information you could obtain from persons living on the spot? Also state the value of the company's mines, if you have sufficient experience in mining to enable you to form a correct opinion, or one satisfactory to yourself; also state what was said to be the value of the mines and property by experienced and practical miners at Tayoltita, and by Marcos Mora, the gefe politico, in July or August, 1867, on this subject?

Ans. That, although he has not the necessary knowledge to enable him to make an exact estimate of the value of the property referred to in the question, still, referring to the statements of persons well informed on the subject, who, while he was at Tayoltita, showed him the constructions which had been made by Juan Zambrano, the first owner of the mines, at great cost, the improvement made by the Abra Company, the ores, and the mines themselves, it does not appear to him an exaggeration to state that the value of the buildings and improvements was one hundred and fifty thousand dollars; the value of the ores two hundred thousand dollars, and the
94 company's expenditures there one hundred thousand dollars. From all that he saw he was convinced of the immense amount of money which had been expended, and that its value, including the mines, was four or five millions.

14th. State whether it is true that Macario Olvera, the successor of Mora as gefe politico, was killed in a disgraceful emuete in the streets of the town of San Dimas, the head town of the district of the same name, in the summer of 1870? If so, state the origin of the quarrel which led to the death or assassination of Olvera, the question being pertinent?

Ans. That the matter referred to in this question is true, and that it is further publicly well known that the cause which led to Olvera's death was a riot among the miners, on account of their antipathy against that gefe politico, because he was not a resident of that department.

15th. State whether the protection of the National and State authorities was duly and legally invoked on behalf of the Abra Silver Mining Company, at the end of 1867, to protect it against the unlawful attempts made against it and the robbery of its property by Mexicans at the instigation of the gefe politico of the district and

the local authorities at Tayoltita? If this be so, then state how you learned the facts? Who was employed by the company as its agent, to represent the facts to the authorities? Who was employed and acted as the company's attorney at the time the said protection was invoked? State what was told him, and what was done in his presence by the National and State authorities when the said protection was asked for, and in reply to his petition?

Ans. That the matter stated in this question is true in all its parts; that deponent, employed by Mr. Rice, of California, as Exall's lawyer, repeatedly solicited, from the State Government, protection for the Abra Company, to suppress the robberies and outrages which the company were experiencing at Tayoltita, but all to no purpose, as, after innumerable steps and measures, the Executive of the State never even so much as requested the authorities at San Dimas to comply with their duties. The only answer given was, that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters.

16th. State whether it is publicly well known to the authorities and the people of this city and other parts of the State that the Abra Silver Mining Company was compelled to abandon their mines and mining operations at Tayoltita in the month of March, 1868, by reason of the acts of the national and local authorities of Mexico? State, also, if the Executive of the State had the power to prevent such acts, and whether he refused to exert such power for the purpose?

Ans. That the matter contained in the question is true, and which he knows, because it was publicly well known that the Abra Company abandoned their mines at Tayoltita in March of 1868; that he also knows that the Executive of the State had the military and civil power requisite to have prevented and protected that company from being violently expelled; the deponent is unable to explain the reasons why this protection was withheld.

17th. State whether you know, or ever heard it said, that the company, or any of its American employees, were ever guilty of any illegal acts, or of disobedience to the laws, during the time that they were working the said mines, or during their residence in Mexico? State whether you know of any valid reason, or excuse, why the
95 due and lawful protection was denied by the Mexican authorities, such protection, you say, having been duly invoked by the company?

Ans. That he knows of no unlawful act having been committed by, or imputed to the company, or any of its American employees, during the time of their residence in Mexico; on the contrary, he knows that their conduct, both in private and public, was good, and consequently he does not know by what lawful reason the Mexican authorities withheld from them the protection to which they were entitled.

18th. State whether Marcos Mora was poor when he became gefe politico of San Dimas, in February, or March, of 1867, and what was his pecuniary condition when he returned to this capital, a prisoner, in September of the same year; what was his lawful pay or salary as gefe politico?

Ans. That Marcos Mora was poor before he became gefe politico at San Dimas, at the time referred to in the question, and he knows that shortly before he was committed to prison for the crime before referred to, that he opened a store, and, shortly after, a pawnbroker's shop.

19th. State whether it is true, or not, that in a conversation with Marcos Mora, the gefe politico, at Tayoltita, in July or August of 1867, that the gefe politico admitted to him that he had made money during the time he was acting as gefe politico, by dividing the profits on the ores stolen from the Abra Silver Mining Company, and which were reduced by the native miners at the small reducing works belonging to Mexicans in the vicinity of Tayoltita? State, also, whether the said Mora made any statements to this effect, or had the temerity to invite witness to participate in that unlawful undertaking?

Ans. That it is a fact, and that he has given an idea of it in his previous replies.

20th. State whether the gefe politico, Marcario Olvera, Marcos Mora's successor, made any admissions or boasts, in witness' presence or hearing, to the effect that he had made money out of the "gringos" by the sale of the ores belonging to the Abra Silver Mining Company, or from the sale of their tools, or pieces of their machinery, or any of the other implements belonging to the said company? State, also, what he heard said, by any credible persons, concerning the sale and destruction of the company's property at Tayoltita; also, what was the general reputation of the gefe politico, Olvera, and also that of Mora, as to their honesty in their official capacity, during the time they were acting as gefes politico in that district, in the years 1867, 1868, and 1869?

Ans. That the matter referred to in the question is true; that he was informed by credible parties at San Dimas that the said Olvera was engaged in the speculations, as stated in the question, and that neither his nor Mora's reputation was good in the years mentioned in the question.

21st. State whether you have heard cavalry officers of the National Republican

army, knowing them to be such, boast that, during the time that they were temporarily here, or passing through here on their way to the city of Mexico, that they had captured mule trains, loaded with provisions and supplies belonging to the "Abra Silver Mining Company," and that they had appropriated such provisions and supplies to the use of the army, and whether anything was said by these officers touching the death of the parties in charge of one of the trains of provisions and supplies, or other conversations, or admissions, with regard to the said depredations committed on the property of the said company. Also state whether you know that the
96 commanding officer here, at that time knew of these proceedings, or favored them at the time they were perpetrated?

Ans. That such a report was very current here; that he has heard several military officers so assert, and that, in his opinion, the government knew of the fact.

22d. State whether you have read the proclamations of Benito Juarez, the President of the Mexican Republic, duly and lawfully published during the years from 1855 to 1866, in which proclamations he invited foreign capitalists to come to Mexico to develop the mineral and agricultural resources of the country, and offering, in the same proclamations, on the part of the authorities, all due protection to life and property, exempting certain articles pertaining to these branches of industry from federal and state taxes; and if so, state how you understand the purpose and intention of the said proclamations, and whether the offers and promises contained in them have been carried out in good faith by the said authorities, either civil or military, with regard to the claimant's case, or have been applied to the Abra Silver Mining Company? Also state whether the offers and promises have been kept and carried out in good faith with regard to the protection and exemption contained in the proclamations, with respect to the other American mining and agricultural companies in the States of Durango and Sinaloa?

Ans. That he knows that the ideas of progress, and for the development of all the branches of the public wealth, which were entertained and always expressed by the republican government, in conformity with its treaty of the 4th of July, 1868, have, unfortunately, not been respected and carried out by the subordinate authorities, especially in the small towns, who failed to understand the high and salutary views of the federal government, which is the explanation of the unjustifiable abuses to which the Abra Company have been subjected.

23d. State what you have heard Marcus Mora, the gefe politico, and Olvera, his successor, state they would do, as authorities, in the event that the Abra Silver Mining Company should attempt to resume their mining operations at Tayoltita?

Ans. That he has heard Olvera give his opinions against the Abra Company; that he would make it impossible for them to work, and that he would injure the members of the company if they returned.

24th. State whether you are the attorney of the Abra Silver Mining Company, or have any interest, direct or contingent, or of any other kind, in the claim made by the said company for the losses and damages sustained by reason of the acts of the Mexican authorities, and in support of which the present deposition has been given?

Ans. That he has absolutely no interest, direct or indirect, in this claim, or in any other claim which the Abra Company have made for losses and damages in support of which he has justly given his deposition, and signed it in good faith, without intending to offend the legitimate authorities of his country; with which the present deposition was concluded, signing with the judge and attesting witnesses.

(Signed) PEDRO J. BARRAZA.
a
(Signed) FERMIN MONREAL.
(Signed) J. CHAVARRIA.
a
(Signed) JESUS GOMEZ.

97 DURANGO, *July* 12, 1872.

[Here follows an order of court, stating that the present deposition, having been concluded, directs it to be delivered to the party interested.]

(Signed) PADRO J. BARAZA, *Judge.*

DURANGO, *July* 16, 1872.

A. W. Adams, the legal representative of the Abra Silver Mining Company, as has been duly shown, respectfully set forth, that the rights of the party represented by me, require that it be shown what credit in law the deposition of lawyer Jesus Chavarria, taken before you on the 12th instant, is entitled to, wherefore I have to request you to certify, at the foot of this petition, in due form, what kind of a person

the said lawyer Jesus Chavarria is, and whether his deposition is entitled to full faith and credit, directing the certificate to be delivered to me, for the uses for which it may serve.

(Signed) A. W. ADAMS.

DURANGO, *July* 18, 1872.

[Here follows an order of the court, directing the certificate to be granted.]

(Signed) BARRAZA, *Judge.*

[Here follows the certificate of the court, stating that lawyer Jesus Chavarria is a resident of this city, (Durango,) one of its first lawyers, and by his dignity and well-known integrity, that his deposition is, beyond all doubt, entitled to full faith and credit.

(Signed) PEDRO J. BAZZARA, *Judge.*
W. C. T., *Off. Translator.*]

[Here follows the certificate of notaries public, Felipe Villareal, Jesus M. Zatarain, and Jesus Cincunegui, that the signatures to the foregoing deposition of lawyer Jesus Chavarria, and Judge Pedro J. Barraza, are true and genuine signatures.

(Signed) JESUS M. ZATARAIN,
(*Rubrica.*)

(Signed) FELIPE VILLAREAL,
(*Rubrica.*)

(Signed) JESUS CINCUNEGUIA,
(*Rubrica.*)
W. C. T., *Off. Translator.*]

I, General Florentine Carrillo, governor and military commandant of the State of Durango, hereby certify, that the signatures which are attached to the foregoing document, of the first criminal judge, Pedro J. Barraza, and of the notaries public, Jesus Cincunegui, Jesus Ma. Zatarain, and Villareal, are the true and genuine signatures of the said individuals.

And at the request of the party interested, I give the present at Durango, on the 25th of July, 1872.

(Signed,) F. CARRILLO.
(Signed,) JOSE PALAO, *Secretary.*

[Here follows certificate of United States consul at Mazatlan, dated August 17, 1872, to the signature of the governor and his secretary.

(Signed) ISAAC SISSON, *U. S. Consul.*
[U. S. consular seal.] W. C. T., *Off'l Translator.*]

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98 DOC. NO. 48.

Deposition of Marcos Mora.

DURANGO, *July* 18*th*, 1872.

To the First Criminal judge acting in matters of civil jurisdiction:

A. W. Adams, on behalf of "La Abra Silver Mining Company," appears before you according to law, and sets forth, that the rights of the party represented by him, require him to request you to cause to appear before you Marcos Mora, and to take his deposition in accordance with the annexed interrogatory, and that upon the conclusion thereof, that you will direct it to be delivered to me for such uses as the party represented by me may esteem proper and lawful. My petition is just.

(Signed,) A. W. ADAMS.

DURANGO, *July* 18*th*, 1872.

[Here follows an order of court directing the deposition to be taken, and Marcos Mora to be cited to appear before the court, to-morrow, 19th of July, 1872, at 11 o'clock

in the morning, and that upon its conclusion the deposition to be delivered to the petitioner.

(Signed) BARRAZA, *Judge.*
a
(Signed) FERMIN MONREAL.
a
(Signed) JESUS GOMEZ.
W. C. T., *Official Translator.*]

[Here follows the entry of the notification of the above order, to the United States citizen, A. W. Adams.

Signature.]

[Here follows an entry that the summons was issued and served.

(Signed) BARRAZA.
W. C. T., *O. T.*]

[NOTE.—Owing to the length of the interrogatory, and for the purpose of facilitating the reading of the testimony, the answers are inserted after the questions, although as is the custom they are separate in the original.

W. C. T., *Official Translator.*

Interrogatory for the examination of Marcos Mora.

1st. State your name and generalities.

Ans. My name is as before stated; of age; unmarried; a merchant and resident of this place; without other generalities.

2d. Where did you reside from the month of March, 1867, up to the beginning of September of the same year?

Ans. That he resided at San Dimas, as gefe politico.

3d. Is it true that you were gefe politico at San Dimas during the time stated in the previous question, with military power? State also the powers, duty, and pay attached to the gefatura of that department.

Ans. That as he has already stated, he was gefe politico of that department of San Dimas, at the time referred to in the question; that he had no military powers, and no other powers except those granted by law to gefes politico; that his salary, by law, was one thousand dollars per annum.

4th. Did you know the mines belonging to the Abra Silver Mining Company, and where they were situated?

Ans. That he knew the mines referred to in the question, and they were situated in the mineral of Tayoltita.

99 5th. What was the name of each one of the mines, haciendas, and works belonging to the said company, and what were the names of the superintendents and other subordinate employees of the same?

Ans. That one of the mines was called "Talpa," others the "Rosario," the "Luz," "Aragan," and others which he does not recollect; that the hacienda was called "San Nicolas;" the superintendent's name was Charles Exall; he does not recollect the names of the other employees.

6th. Who was your successor as gefe politico of the district of San Dimas, and where did he reside when he was appointed?

Ans. That his successor was Macario Olvera, and that he resided at Canatlan when he was appointed.

7th. Were you personally, or by reputation, acquainted with the employees of the Abra company during the time that they were working their mines at Tayoltita? Did you know, directly or indirectly, or witness any act of disobedience on the part of said employees, or the company in general, to any of the laws or to the authorities, during the time they were residing there?

Ans. That he knew, as he has stated, the employees of the Abra Mining Company, and the deponent never knew of their having been guilty of any act of disobedience to the laws, or of the legitimate authorities.

8th. In what year and month did Macario Olvera enter upon his duties as gefe politico?

Ans. That Macario Olvera entered upon the duties of his office at the beginning of September, 1867.

9th. What was his name, and where did the party live who acted as gefe politico in the interval between the time when the deponent left and Olvera entered upon his duties?

Ans. That his name was Arcadia Laveaga; that he lived, and still lives at San Dimas.

10th. What was the name of the gefe politico whom you succeeded?

Ans. That his name was Ygnacio Quiros.

11th. Were you intimately acquainted with the two persons whom you have stated were gefes politico, prior, and subsequent to the time you were gefe, and did you know their opinion of the company, and the other Americans residing in that department, and how they expressed themselves with regard to the laws promulgated by President Juarez, wherein he invited foreigners to work the mines in Mexico; and what did they say with regard to their duties to protect those foreigners?

Ans. That although he did not know the persons referred to in the question, previous to becoming gefe politico, he afterward became perfectly acquainted with them, and knows that they were unfriendly to the company, "La Abra," and toward the other Americans residing in the department; that neither of them were satisfied with the laws given by President Juarez inviting foreigners to come to the country, and although those persons might have obeyed them, it was against their own wishes; that they not only showed their unwillingness to do so, but in various ways tried to molest them and force them to leave the place.

12th. Who is at present gefe politico, and who is judge of first instance in that department? Are they Arcadio Laveaga and Ygnacio Quiros?

Ans. That Arcadio Laveaga is gefe politico, and Quiros judge of first instance.

100 13th. Say whether or not Messrs. Laveaga and Quiros, during the time you were gefe politico, and in your presence, and that of other persons, expressed themselves against the Abra Company, as though they were resolved and decided, at all hazards, to drive them out of Mexico? and state whether this feeling and intention was or not the common and general one there during the time you were gefe politico?

Ans. That his reply to the eleventh question will answer this one; and the general and common feeling in that town was adverse to the Americans.

14th. Whether the local authorities at San Dimas, in general, expressed themselves in favor of the forcible expulsion of the Abra Company, and the other American companies from that district, and from the Mexican Republic; whether they worked without any concealment to attain their purpose during the years 1867 and 1868; and whether he knows the reason why they entertained and maintained these feeling for their expulsion?

Ans. That he thinks that this question is answered in his previous replies, although the deponent cannot affirm that the local authorities at San Dimas expressed themselves against the other American Companies who resided outside of that district, nor that they sought for the expulsion of any other except the Abra Company; and they gave as their reason for this that the Americans who went to that district wanted to take their mines and lands.

15th. Whether he ever knew, or heard it truthfully asserted, that any of the employees of the "Abra Company" had worked for, or tried to work for, the annexation of the States of Durango or Sinaloa, or any other State of Mexico to the United States; and if so, state the name and residence of the person who gave him the information?

Ans. That he never heard anything said upon the subject referred to in this question.

16th. Whether he knew Nicanor Perez, and Guadalupe Soto, authorities at Tayoltita; whether he knew the marked feelings and intentions which they entertained concerning the Abra company, and whether these were favorable to or adverse to the company?

Ans. That he knew the persons referred to in the question; that they were authorities at Tayoltita in 1867, and their feelings were adverse to and unfavorable to the work of the Abra Company.

17th. Whether he recollects what occurred, with regard to the imprisonment of Charles H. Exall, the general superintendent of the Abra Mining Company, in 1867, by Nicanor Perez, who was at that time the local judge at Tayoltita; whether the said Exall broke any law which would justify the local judge in imprisoning him; and that he state all he may know upon the subject?

Ans. That the judge, Nicanor Perez, told him, at the time, that he had imprisoned Superintendent Charles Exall, because he had personally insulted him; and that in revenge, he had fined and imprisoned him. The deponent knows nothing further about the matter, or whether the judge had any legal cause to imprison Exall, or whether he had infringed any law.

17th. Whether he knows lawyer Jesus Chavarria, of this place; whether he knew him at the time deponent was gefe politico of the aforesaid department, in 1867; whether he enjoys a high reputation as a lawyer; and whether he is considered in Durango as a respectable and truthful person?

101 Ans. That he is perfectly well acquainted with Lawyer Jesus Chavarria, and was so at the time referred to in the question; that he enjoys a high reputation in his profession, and is considered as a truthful and respectable person.

19th. Whether during the time of his administration as gefe politico he saw Lawyer Chavarria at the district of San Dimas? State how many times, and at what place.

Ans. That he saw Lawyer Chavarria in the month of July, 1867, at Tayoltita, in the district of San Dimas, once, although it appears to him that he saw him on another occasion, but he is not sure of it.

20th. How far is it from San Dimas to Tayoltita, or from San Dimas to the company's reducing works of "San Nicolas."

Ans. That it is about five leagues.

21st. Whether it is true that Lawyer Chavarria accompanied the deponent from San Dimas to Tayoltita, and to the company's reducing works, mines, and other works, in July or August of 1867?

Answers in the affirmative.

22d. Whether they both examined the mines and reducing works, and whether Mr. Chavarria examined them at his request?

Answers in the affirmative.

23d. Whether they staid two days at Tayoltita on that occasion, and whether it was on the first or second day of their stay, that they visited the company's mines, and who went with them?

Ans. That in fact they staid two days at Tayoltita, and that their visit to the company's mines was on the second day of their stay, and they were accompanied by Mr. Chavarria's servants.

24th. State if you know, what was the value of the mines belonging to the Abra Company, in the vicinity of Tayoltita, in 1863, what is their present value, and how much it would cost to put them in a suitable condition to be again worked?

Ans. That having no knowledge concerning mining, it is impossible for him to state what was the value of the mines belonging to the Abra Company at the time referred to in the question, nor how much it would cost to put them in condition to be worked again, but they are unquestionably the best mines in the district of San Dimas.

25th. What improvements had the company made at the mines and reducing works, and what was the fair value of these improvements, or their cost?

Ans. That the company built several houses for the use of their employees, he does not recollect how many; they built a large house at their reducing works, and various other improvements, such as erecting a ten-stamp mill for grinding their ores. That the value of these, including the extraction of ores and their transportation to the reducing works, could not have been less than five hundred thousand dollars.

26th. In your opinion, and from the quantity of ores at the company's reducing works, how much did the company expend in the extraction of ores, and their transportation from the mines to the reducing works of San Nicolas, from the time that they commenced work up to the time that you were there, in July or August of 1867, and how much were the said ores worth?

Ans. That although he can not state how much the extraction of the ores which were at the company's reducing works may have cost, as this would vary with circumstances, he can affirm that the company, in July of 1867, had at the San Nicolas reducing works very nearly six thousand cargas of ores.

27th. Whether it is true that during the time of his administration, the
102 richest of the company's ores were stolen by Mexican operatives, and also whether it is true that the local judges would receive no complaint upon the subject?

Ans. That during the time of his administration he had no knowledge of the theft of the ores referred to in this question, but he did hear it stated that during Olvera's time, that the Mexican operatives, who were absolutely without work to maintain themselves, stole some of the company's ores, and that neither Quiros nor Olvera would listen to any complaints, made on account of the said robberies, by the company's superintendent.

28th. Whether it is true that during the time of the deponent's administration, in that district, a mutiny was excited by the two local judges, that the mutineers proceeded against the reducing works of San Nicolas, armed with pistols and machetes, and drove out the superintendent and other America employees from the place which according to law belonged to them?

Ans. That he is ignorant of the matter referred to in this question.

29th. Whether the deponent, by virtue of his powers as gefe publico did, directly or through Guadalupe Soto, the local judge, order the company to give work to all unemployed Mexicans in the district, or else turn the mines over to the operatives to work them on their own account; whether it is also true that the deponent then said "that he would not hold himself responsible for the consequences which might ensue?" If this is so, then state whether he meant, by the expression, that the people who were without work might drive the said company out of the place?

Ans. That the matter stated in this question is not true.

30th. That the deponent state all that he knows, or has heard, with regard to whether, in the month of October, 1867, the Abra Mining Company employed Mr. Joseph Rice, as attorney-in-fact, and Lawyer Jesus Chavarria, as attorney, to bring a complaint for the damages and persecution which the said company was experiencing, and to invoke, on behalf the company, the protection of the general and State authorities of Durango, represented at that time by Governor General Francisco Ortez de Zarate, of the regular army of the Republic, and whether the protection desired by the company was refused by the Government, after having taken you out of your prison to consult you about it, and because the American employees and the Abra Mining Company were suspected of being annexationists?

Ans. That Lawyer Chavarria informed him that the Abra Mining Company at the time referred to in the question, employed him and Mr. Rice, the former as lawyer, and the latter as attorney-in-fact of the company, to make a complaint to the governor, General Francisco Ortez de Sarate, of the damages and persecution which the company were experiencing at San Dimas, and asking him for protection; that at the time, the governor sent for deponent, and questioned him with regard to the company; that the deponent informed him that it consisted of Americans, and, like all other foreigners, was working for the ruin of Mexico; he refused it the protection which it prayed for.

31st. Whether in July or August of 1867, while acting as gefe politico, he gave any orders to the head miner of the company in charge of the operatives, in the presence of Lawyer Chavarria and others, and if he did, state what those orders were, and whether he dismissed any of the employees or operatives from the company's service, and for what reason?

103 Ans. That he does not recollect having given any orders, in the presence of Mr. Chavarria, and that it is not true that he then dismissed any of the company's employees or operatives from their service.

32d. That he state, positively, whether he dismissed the company's chief miner, and all the rest of the operatives, in the presence of Mr. Chavarria, and others, when he visited the mines; and if he did, then state what his reasons for so doing were?

Ans. As he has stated in his previous reply, he does not *recollect* of having dismissed any of the operatives.

33d. Whether, together with Mr. Chavarria, he visited the Abra Mining Company's reducing works, San Nicolas, the machinery, and other improvements, on the second day of their stay at Tayoltita, in July or August of 1867; whether they also examined the quantity and quality of the ores at and in the vicinity of the reducing works; what was their object in making this examination, and whether he informed Mr. Chavarria of the views he entertained in doing so?

Answers. That he has already stated, in one of his previous replies, that in company with Mr. Chavarria he visited the Abra Mining Company's reducing works, machinery, and other improvements on the second day of their stay there, in July of 1867; that they did so from curiosity and for amusement; that he did not communicate his views to Mr. Chavarria, for he had none on the subject.

34th. Whether it is true that he sent word to the company, through Mr. Exall, the superintendent, to give work to all the unemployed Mexicans in the district of San Dimas, and that if he did not do so, he would imprison, not not only him, but all the other Americans, break up the Abra Company, and give over the mines and improvements to the Mexicans to work for their own account; and whether it is true that he told the operatives almost the same thing the day before, when they visited the mines?

Ans. That the matter referred to in this question is wholly false.

35th. Whether it is true that, on the second night he was visited at the house where he and Mr. Chavarria were stopping, in Tayoltita, by the same miner he had spoken to at the mine, and by a large number of the operatives of the mines, whom he had seen the day before; and, if so, what orders did he give those operatives of the company? Whether it is true that he then ordered them to stop work, and told them that he would give them the mines to work for themselves, and that within a few days? If this is so, then state what reasons he had for so saying?

Ans. That as the previous one, it is wholly false.

36th. Whether it is true that he stated in the presence of the Mexican operatives, that the company and the American employees were annexationists; that they were "Gringos" who were meddling in the politics of the country with the view of influencing the annexation of the frontier States to the United States; if it is so, then state whether Mr. Chavarria and his servants were present, what answer his audience gave, whether it is true that they applauded, and promised to drive the company out of the country?

Ans. That the contents of this question are also false.

37th. Whether it is true that when the operatives applauded him, that he told Mr. Chavarria that he would drive the company out of the country before he got done with it, or something of the same import?

Ans. That is also false.

104 38th. Whether it is true that he made use of his influence to have Olvera appointed his successor as gefe politico, and whether, to attain it, he made use of several prominent persons in the State? Who was the person or persons who assisted him, and whether the deponent expended any money to secure Olvera's appointment? For what purpose or end did deponent desire that Olvera should be appointed his successor, and what did he inform Mr. Chavarria was his object in securing Olvera's appointment?

Ans. That it is wholly false that he influenced, or tried to influence the appointment of his successor in any manner.

39th. Under what National and State Government did you serve as gefe politico of the department of San Dimas?

Ans. That he acted as gefe politico under the provisional government of General Zarate, governor of the State, and under the Government of President Dn. Benito Juarez.

40th. Whether he informed Mr. Chavarria that he had had several interviews with Olvera before and after he was appointed gefe politico, proposing to him to denounce the company's mines in case they should abandon them, and offering Chavarria a part in them if would assist him as a lawyer, in the difficulties which he had in his matters in Durango?

Ans. That he never made any such statement to Mr. Chavarria as is mentioned in the question, and that he never made him any offer of any kind in connection with this subject.

41st. Whether it is true that he never liked the Abra Company, and that he hated and despised it, as he did every other American?

Ans. That the contents of the question are not true.

42d. Whether it is true that the said Macario Olvera, during the time that he was acting as gefe politico of the department of San Dimas, owned to him that the expulsion of the Abra Mining Company was due to his exertions as such authority, and whether Olvera boasted of having been the direct cause of the expulsion.

Ans. That Olvera never stated anything to deponent upon the subject referred to in the question; according to Chavarria, Olvera made such a statement to him, Chavarria.

43d. Whether he resigned as gefe politico, or was removed for cause in which Lawyer Chavarria defended him in this capital?

Ans. That he resigned.

44th. Whether he knows that the American mining company, called the Carmen, which was working at Candelero, a short distance from San Dimas, was attacked before the Abra Company, and that subsequently the local authorities, among which was one Salazar, killed some of the American employees belonging to the company and drove it away?

Ans. That he knows of the matter referred to in this question, by report.

45th. Whether the deponent has any interest direct, indirect, or contingent, in the claim made by the Abra Mining Company against the Republic of Mexico, or is the attorney of it, or interested in the success of the claim?

Ans. That he has no interest of any kind in this matter.

Additional question. State what was the date of your appointment as gefe politico of the district of San Dimas, and also the date of your resignation, or removal from office; who signed the corresponding communications; also, will you please produce them to have copies of them made, stating the date of the receipt of your commission and resignation?

105 Ans. That he was appointed by the Governor, General Francisco Ortez de Zarate, on the 1st of March, 1867, and that his resignation was accepted in July of the same year; that the first document referred to is signed by Governor Zarate, and his secretary, and the latter one, by the latter only; that he has no objection to produce the communications for the judge to take copies of them, if it is desired, with which the present deposition was closed, and which, having been read to him, he confirms and ratifies it, signing with the judge and attesting witnesses.

(Signed,) PEDRO J. BARRAZA. (Signed,) M. MORA.

(Signed,) FERMIN MONREAL. (Signed,) JESUS GOMEZ.

DURANGO, *July 23d*, 1872.

[Here follows an order of court directing the documents referred to by M. Mora, in his last answer, to be copied into these proceedings, the copies to be certified to, and the originals thereafter to be returned to Mora.]

(Signed,) PEDRO J. BARRAZA, *Judge.*

[Attesting witnesses' signatures.]

[Here follows an entry that the copies were made in accordance with the foregoing order, and the originals returned.]

(Signed,) PEDRO J. BARRAZA, *Judge.*

[Witnesses' signatures.]

We, the undersigned, notaries public, hereby certify, that the foregoing signature of M. Mora, affixed to the deposition, taken on the 23d of the present month, is the true and genuine signature of the said Mora, who was the gefe politico of the department of San Dimas, in the State of Durango, at the time therein stated; we also further certify that the signature which witnesses the said deposition is that of Pedro J. Barraza, judge of the first criminal court, now presiding in civil matters.

In witness whereof, we give the present in the city of Durango, on the 25th of July, 1872.

(Signed,) JESUS CINCUNEGUI, *Notary Public.* [*Rubrica.*]

(Signed,) FELIPE VILLARREAL, *Notary Public.* [*Rubrica.*]

I, General Florentino Carrillo, Governor and military commandant of the State of Durango, hereby certify that the signatures with which the foregoing documents are witnessed, are those of Lawyer Pedro J. Barraza, judge of the first criminal court, now presiding in civil matters, and of Jesus Cincunegui and Felipe Villarreal, notaries public, and that they are genuine, and entitled to full faith and credit.

Given at the request of the party interested, at Durango, on the 27th of July, 1872.

(Signed,) F. CARILLO

(Signed,) JOSE PALAO, *Secretary.*

[Here follows certificate of Isaac Sisson, the United States consul at Mazatlan, dated August 17, 1872, to the signature of the Governor and his secretary.]

[SEAL OF THE U. S. CONSULATE.] (Signed) ISAAC SISSON, *United States Consul.*

106 [Here follows copy of the commission of Marcos Mora. as gefe politico of the district of San Dimas, in the State of Durango; the instrument bears date Durango, March 1, 1867, and is signed by Francisco Ortez de Zarate, Governor, and J. Hernandes y Marin, secretary.]

[Here follows copy of the acceptance of Marcos Mora's resignation as gefe politico of San Dimas; it is dated Durango, July 0, 1867, and directs him to turn the office over to the municipal president.]

[Here follows an entry by the court, stating that Marcos Mora, having failed to appear on the two subpœnas sent to him, it was necessary to compel his appearance by means of the police.]

(Signed,) BARRAZA, *Judge.*
W. C. T., *Official Translator.*

DURANGO, *July 23d*, 1872.

To the Judge of the First Criminal Court, acting in civil matters:

A. W. Adams, a citizen of the United States, at present in this city, attorney-in-fact of the Abra Silver Mining Company, as has been duly shown, appears before you, and respectfully requests you to certify that Marcos Mora, who has given a deposition before the court presided over by you, on the 23d instant, is the same person who was gefe politico at San Dimas, in 1867.

(Signed,) A. W. ADAMS.

[Here follows an order of court directing the certificate to be given.]

[Here follows a certificate of Judge Pedro J. Barraza, of the first criminal court, that Marcos Mora, to whom the communications were addressed, copies of which have been made part of the present proceedings, was gefe politico of the department of San Dimas, in the year 1867.]

(Signed,) PEDRO J. BARRAZA, *Judge.*
W. C. T., *Official Translator.*

Doc. No. 52.

Certificate of the First Criminal Judge, (acting in civil matters,) of the city of Durango, Mexico.

DURANGO, *July* 22, 1872.

To the First Judge of Letters, of the Department of this Capital:

A. W. Adams, a citizen of the United States, at present residing in this city as attorney-in-fact of the Abra Silver Mining Company, appears before you, according to law, and sets forth, that the rights of the party represented by me, require me to

request you to examine the accompanying interrogatory, and give me your certified deposition upon the points therein contained, according to your knowledge of them, requesting that, with the certificate, the original petition and interrogatory be returned to me, as I require that document to present proof in the claims which I have made against Mexico, in behalf of the said company, before the Joint Commission now sitting at the city of Washington, under the treaty made between the United States and Mexico, on the 4th of July, 1868.

(Signed,) A. W. ADAMS.

107 DURANGO, *July* 23, 1872.

[Here follows an order of court, directing the certificate to be given, and thereupon the originals to be returned.]

(Signed,) BARRAZA, *Judge.*

a a

(Signed,) FERMIN MONREAL. (Signed,) JESUS GOMEZ.

[Here follows an entry of the notification of the above order to A. W. Adams.]

(Signatures.)

Interrogatory, in conformity with which the "First Judge of Litras," of the department of this capital, is requested to certify in due form.

1st. State your generalities.

Ans. My name is as before stated, thirty-eight years of age, married, a Mexican citizen, and at present holding the office before referred to.

2d. Were you acquainted with Joseph Rice, in San Francisco, Upper California, in the years 1863, 1864, and 1866?

Ans. I was acquainted with Joseph Rice, a citizen of the United States, in San Francisco, Upper California, in the year 1863, and I saw him there again during the years 1864 and 1865.

3d. Is it true that the said Rice, with whom you were acquainted in California, visited you at your office in this capital in October of 1867, and begged you to advise him as to the best lawyer to employ to assist the Abra Silver Mining Company for the purpose of obtaining the protection of the national and State authorities, against the acts of the Mexican local authorities at Tayoltita, in the district of San Dimas, in this State; and, if so, then state what lawyer in this city you recommended him to employ for the said company.

Ans. That in fact the said Rice, a citizen of the United States, visited the undersigned at his office in this city, in October, of 1867, and begged him to suggest to him one of the best lawyers to aid him in arranging some matters connected with the mines of San Dimas; that the undersigned introduced him to Lawyer Jesus Chavarria, but without knowing what was the business for which he required the services of a lawyer in this city.

4th. Whether Lawyer Chavarria was recommended by you to Mr. Rice as one of the best lawyers in the State, and whether after he made a petition to the Governor of the State, Zarate, you heard the said Chavarria state what had been the result of his efforts to obtain even a letter to the authorities at San Dimas, instructing them to protect the said company; whether Governor Zarate refused to grant what was requested; and if you heard the reason, and recollect it, state what it was.

Ans. That as he has stated, he recommended the said Chavarria as one of the best lawyers, and that he has heard this gentleman speak of the matter referred to in the question.

And at the request of A. W. Adams, a citizen of the United States, and in reply to all the questions contained in the interrogatory accompanying his petition of the 22d instant, I give the present certificate to serve him for the purposes which he may require, on two written pages of the third stamped paper.

Given at the city of Durango, on the 23d day of July, 1872.

(Signed,) PEDRO J. BARRAZA.

108 We the undersigned, notaries public, hereby certify that the signature attached to the foregoing, is that of Pedro J. Barraza, the 1st criminal judge, acting in civil matters, and that all that is therein set forth is entitled to full faith and credit, in law and out of it.

In witness whereof we give the present, at the city of Durango, on the 25th day of July, 1872.

(Signed,) JESUS CINCUNEGUI, *Notary Public.*
[*Rubrica.*]

(Signed,) FELIPE VILLAREAL, *Notary Public.*
[*Rubrica.*]

I, General Florentino Carrillo, Governor and military commandant of the State of Durango, hereby certify, that the signatures which are affixed to the foregoing document are the true and genuine signatures of Lawyer Pedro J. Barraza, the judge of the first criminal court, and of the notaries public, Jesus Cincunegui and Felipe Villareal, and that they are entitled to full faith and credit.

And at the request of the party interested, I give the present at Durango, on the 25th of July, 1872.

(Signed,) F. CARRILLO.

(Signed,) JOSE PALAO, *Secretary.*

[Here follows certificate of Isaac Sisson, United States consul at Mazatlan, dated August 17, 1872, to the genuineness of the signature of the Governor and his secretary, acting in their respective capacities of Governor and secretary.

W. C. T., *Official Translator.*]

Document No. 53 E.

Deposition of Matias Avalos, of San Dimas, translated from Spanish.

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, Mexico, ss:

On this the tenth day of September, eighteen hundred and seventy-two, (1872,) at ten o'clock in the morning, personally appeared before me, Isaac Sisson, United States consul for the port of Mazatlan and the dependencies thereof, Matias Avalos, a witness for the claimant, who having been duly sworn to speak the truth with regard to what he knows, and in reply to the questions put to him by me, with regard to the merits of the aforesaid case, says:

1st question. What is your name, age, place of birth, residence, and employment, and where did you reside and what was your employment from the years 1865 to 1868 inclusive?

Ans. My name is Matias Avalos; I was born near Tepic, in the State of Jalisco, in Mexico; I am a Mexican citizen; reside at San Dimas, State of Durango, Mexico; I have resided during the last seven years at Tayoltita, and San Dimas; I am at present working for the Durango Mining Company, as a courier and muleteer at San Dimas; I lived at Tayoltita from August, 1865, up to March, 1868; I worked the greater part of this time for the Abra Silver Mining Company, at Tayoltita, in the district of San Dimas, State of Durango.

2d question. Have you any interest, direct, contingent, or of any other kind, in the claim of the Abra Silver Mining Company, in support of which you give the present deposition, or are you the agent or attorney of the company, or any person who has any interest? 109

Ans. No, sir; absolutely none.

3d question. Have you given a deposition before in this case, in favor of the claimants? If you have, then state when, and before what authority, and who was the official interpreter of said authority when your testimoney was taken upon that occasion?

Ans. Yes; I gave my testimony in favor of the claimants, two years ago, I think, in the month of May, 1870, in favor of the Abra Silver Mining Company, before the United States consul at this port, and ex-Governor Charles F. Galan was the interpreter, and wrote down my testimony before you, the consul. I requested Mr. Galan to write down my answers to the questions put to me by the attorney of the said company, and the consul consented that he should do so for me.

4th question. Was all that you then stated in favor of the claimant, the Abra company, the truth, or did you then state anything which you wish to now retract or change? If so, you now have the opportunity of doing so.

Ans. No, absolutely nothing; all that I stated in that deposition was the simple truth, and I do not wish to make the slightest alteration in it.

5th question. Were you forced or persuaded by any person to give that deposition, in 1870, in favor of the company, or was it given of your own free will and accord, or did you give it under the promise of money or reward, or any other consideration, except that of doing justice to the company and to Mexico?

Ans. No; I was not paid, nor was I promised any money or any other consideration whatever for my evidence in this case; nor did any one attempt to persuade or compel me to give the said deposition, nor could anybody have succeeded in doing so if

they had attempted to. It was given of my own free will and accord, after having stated to the attorney of the said company what I knew about the matter, and all was fairly and honestly done by all who were engaged in taking the said deposition.

6th question. Have you given your deposition, at San Dimas, in favor of the opposite party, that is, in favor of Mexico, since the time that you gave it in favor of the company? If you have done so, then state when, before what magistrate, and why you gave testimony in favor of the defendant at San Dimas; whether you did so of your own free will and accord, or were illegal means made use of to persuade you to do so?

Ans. No; I never gave my testimony in this case at San Dimas, or at any other time or place, of my own free will and accord, except before Consul Sisson, at this port, in the month of May, 1870, in favor of the Abra Silver Mining Company, as I have stated; nevertheless, it is true that Quiros, the judge at San Dimas, sent for me to give a deposition before him last summer, in connection with this case, and he sent me word that if I did not go to court, and give evidence against the Abra Mining Company, that he would fine me one hundred dollars, and otherwise punish me. I went to the court, and there found a multitude of natives of the country, armed, and some of them threatened me with violence, because the judge told them that I had given my deposition in favor of the company, and against Mexico. The judge wrote a deposition for me to sign, a part of which was not true, but I did not sign it,
110 because I could not write my name well enough to do so, otherwise I might, perhaps, have signed it, or put my mark to it, or to anything else which they might have written, as I would not have dared to resist, under the circumstances, as the general feeling prevailing there was one of violence, and those present were too numerous, and incensed against me for having told the truth in favor of the company two years before. I did not, however, even make my mark to the document which the said Judge Quiros had prepared for me to sign in favor of Mexico. For this reason, the judge began to read the paper which he had written for me to sign as my deposition, but there was so much noise in the court that he could not continue, when he said that "it was all right and correct," and got up and went out. I then took the said paper, and saw that my name was signed to it, and that it had my mark on it. I carried it to the door, outside of the court, and requested a Mexican to read it to me; he commenced doing so, but carried it back into the court again before he had finished it, saying that he was afraid to have it in hand outside of the court, since the judge might return and miss it; hence, I suppose that that paper went as my deposition, but I do not consider it as any evidence of mine in this case. Judge Quiros proceeded in this same way, I have been told, with many other witnesses there. The only deposition that I have given of my own free will and accord is the one which I now ratify, and which was given here before the consul, in May of 1870, in favor of the Abra Mining Company. This deposition was written at my request, and, as I stated, by Don Galan; it was lawfully read to me twice by the consul, or his official interpreter, before I signed it, and that is my deposition, and no other is of any value whatever.

7th question. Do you know of any other instances of this kind, in which the documents sent by the authorities as evidence in favor of Mexico were forged on a manner similar to yours; and do you know whether false occupations were assigned to the witnesses, to give them more importance or respectability, calling them miners, merchants, &c., &c., when in reality they were only loafers and vagabonds, who did nothing but spend their whole time in the bar-rooms and hang about the court? If you know the names of any, please state them?

Ans. I heard many people laughing, because the witnesses, called by the Government against the Abra Company, were called merchants and miners, when in fact they were only loafers, whose only quarters were the court or bar-rooms; but, as I live amongst them, and some of these men would not hesitate to use their machetes on me, I do not wish to say anything further upon the subject, touching the names of the witnesses who were styled merchants, miners, &c.; as I have stated, I shall have trouble enough for having said what I have in this case, which is nothing more than the truth. Quiros will, no doubt, send for me again, and I may, perhaps, find myself compelled to sign some paper contradicting what I have here stated, which will be sent as my testimony, and which is not true; and if I do not, I may be forced to leave my home and friends, and seek a home elsewhere, unless the consul can protect me. The judge, gefe politico, and also many other persons there, who are opposed to the Abra Company, have a very strong party, and I hope the consul will not oblige me to say anything more upon the subject of names. I have already said more than I ought to have said, and anyhow what I have said is all that I know about the matter.

8th question. Did you come to Mazatlan for the purpose of giving this depo-
111 sition, or were you told to come for that purpose, or had you any idea, before coming to Mazatlan, that you were going to be asked to give this deposition?

Ans. No person whatever made me come here for this purpose, nor had I any knowledge whatever that my deposition would be asked for; I only learned so after I ar-

rived at this port. I came here in the employ of my company, the Durango Mining Company, to attend upon the sick family of our superintendent, the consul.

(Signed,) MATIAS X AVALOS,
By H. DIAZ PENA.

Subscribing witnesses: C. B. DAHLGREN.
H. DIAZ PENA.

[Here follows the certificate of Isaac Sisson, the United States consul at Mazatlan, dated September 10th, 1872, to the proper taking of this deposition, to the credibility of the witness, and that his statements are entitled to full faith and credit.]

(Signed) ISAAC SISSON, *U. S. Consul.*
[U. S. consular seal.] W. C. T., *Off'l Translator.*

Doc. No. 50.

Rebutting testimony. In the matter of the claim of "La Abra Silver Mining Company" against the Republic of Mexico. Deposition of Charles B. Dahlgren, on behalf of claimant, to be submitted in evidence before the Joint Commission of the United States and Mexico. In session at Washington, D. C.

REPUBLIC OF MEXICO, CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, State of Sinaloa, ss:

At 2 o'clock this 18th day of September, 1872, before me, Isaac Sisson, consul of the United States, in and for the Port of Mazatlan and the dependencies thereof, personally appeared Charles B. Dahlgren, well known to me as the person he represents himself to be, and a credible witness, who after having been duly sworn by me according to law, to state the truth in answer to interrogatories propounded by me, touching the merits of the above-entitled cause, deposes and says:

Question 1st. What is your name, age, birth place, citizenship, residence, and occupation?

Ans. My name is Charles B. Dahlgren; I am 32 years of age; I was born in Hartisville, in the State of Pennsylvania, in the United States of America, and I am a citizen of the same.

I reside in San Dimas in the mineral district of the same name, State of Durango, Mexico. My occupation is that of assayer, machinist, mining engineer, and general superintendent of the Durango Mining Company, whose hacienda and works are at San Dimas.

Question 2d. Are you or not a son of the late Admiral Dahlgren, of the United States navy, and are you consul of the United States for the State of Durango, Mexico, lawfully appointed and confirmed, and as such recognized by the United States and Mexican authorities?

Ans. Yes; the late Rear-Admiral John A. Dahlgren, was my father, and I hold the position suggested in the question, and I am so recognized by said authorities.

112 Question 3d. Do you know, and have you visited and examined the mines, haciendas, and the late works and improvements of "La Abra Silver Mining Company," claimant in this case?

Ans. Yes; I know them, and have visited and examined them.

Question 4th. Where are said mines and property situated, and of what did said improvements of claimant consist, and in what condition are they now?

Ans. The principal mines of "La Abra Silver Mining Company," are in "La Abra" mountain, near Tayoltita, in said district of San Dimas. Their names are "El Rosario," "El Cristo," "La Abra," "La Talpa," "El Arrayan," "El Sauce," and some others in that district, whose names I have forgotten. The condition of those mines were good when the Abra company abandoned them; but since that time some of them have fallen in, and filled up with débris, and it would require large expenditures of money to reopen them, and to put them in as good condition as they were when the "Abra Mining Company" abandoned them. The improvements of that company consisted of a ten-stamp mill of the first class, a suitable mill-house for the same, two haciendas—the "St. Nicolas" and the "Guadalupe"—a large number of outhouses for the residences of the company's employees and their families, constituting, in appearance, a small village; together with supplies of every kind needed for carrying on silver and gold mining, and for beneficiating the same on a very large scale, all being situated near Tayoltita, in the said district of San Dimas. The stamp-mill and machinery have been torn to pieces, and parts of them sold and leased out for use in other places, and by other parties than their owners.

Question 5. Who claims ownership of the said mines, haciendas, machinery, stamp-mill, and other improvements of said "Abra Company;" or, if you know, state who,

if any person, assumes or exercises the right to dispose of the said property of claimant, either by absolute sale, or by leasing out the same for use in other places than Tayoltita, and without authority to do so from claimant in this case? Will you please state all you know in relation to any such sales or lease of the mining tools, machinery, or the stamp-mill of said company, or any part of the same, giving names, dates, and circumstances so far as you can recollect them?

Answer. Yes; the local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased some parts of it. I know, too, that a Mexican citizen, whose name is Francisco Torres, and who is now, and has been for the past year and more, the occupant of said haciendas and mining property and machinery of said company, claims ownership of the same; and that he works the mines of claimant successfully, by "Patio" process, a part of them under a "denouncement" made of the "Rosario" mine in the name of one Granger, an Englishman; and although the denouncement is said to legally cover only one of the principal mines of said company, "El Rosario," which is probably the richest and most valuable of them all, he nevertheless works some of the other mines of said company in "Bonanza," and claims to own them all, as he told me when I was there, but a few months ago.

I know that parts of the stamp-mill and machinery of "La Abra" company have been taken away from the company's works at Tayoltita, and that the same are
113 now in use, and have been for two or three years past, by other mines and mining companies in distant places, some of them as far as three days' ride from Tayoltita. I know that a Mr. Hapgood, of Buena Vista, has a part of the claimant's mining tools and machinery. Mr. Hapgood has in use at his works in Buena Vista a "jack-screw," a large pair of scales, and many other things taken from said claimant at Tayoltita, and sold to him, as he told me, at a mere nominal value, by unauthorized persons. I visited Buena Vista in June last, where I saw and recognized those articles in use, and was told by Mr. Hapgood that he had been using them for his mining operations there for the past two years or more, and that they came from claimant's hacienda at Tayoltita. Buena Vista is about two days' ride, and for packing machinery it is three to four days' travel from Buena Vista to Tayoltita. I know that the "retort" belonging to that stamp-mill, and without which the whole mill is completely crippled for use, was taken from the "La Abra Company's" works at Tayoltita, and it is now in use by a Mexican citizen named *Juan Cuevas*, who works the same in the mineral district of Huahuapa, at a place called "Huahuapa," about three days by pack mules from Tayoltita. Said Cuevas has many other valuable parts of said machinery, or the iron taken from the same, together with large numbers of claimant's mining tools, which I saw there myself, and recognized as the property of claimant, adjusted to other machinery belonging to said Cuevas, and in use. This was in or about the month of December, 1871. I spoke to said Cuevas about the matter, as I had to Mr. Hapgood, and he said it was the property of claimant, which he confessed was taken from claimant's mill-house and hacienda; and he also told me he had bought it of some one at a mere nominal price, and considered himself, he said, very fortunate in getting hold of such machinery so cheap. I know of a number of thousand dollars worth of said machinery and tools taken from the stamp-mill and hacienda of claimant, and now in use in San Dimas, and in a number of the mineral districts adjoining the San Dimas district, and the same scattered over a territory of a hundred and fifty miles square, more or less, a part of which has been in use three years or more, and probably much of said machinery and tools worn out or nearly so.

I also know of other parts of said machinery belonging to "La Abra Silver Mining Company," at Tayoltita, having been sold to the company of which I am superintendent, and for which we are now held responsible for its appraised value by the judge of first instance in the district of San Dimas, with the privilege of using it all until called for, at an appraised value for the use of the same. After making some inquiries in reference to the real ownership, I heard, by common report in the district, that no individual had a right to sell and dispose of said property of claimant, but that its ownership was really with the Mexican Government; that a suit was pending before the Joint Commission of the two Governments, for reclamation, at Washington, and that the acts of the local authorities in compelling claimant to abandon its mining enterprise, it was claimed, had given the real ownership of said property to the Mexican Government. Last spring or summer, I found out the mistake made in buying some parts of the machinery of claimant from the wrong parties; I received a note from Judge Cipriano Quiros, the highest judicial authority in the district of San Dimas, last summer or spring, asking me to call upon him, at his court-room, in San Dimas, and settle the matter referred to with him. I called as requested, and the said judge then told me that only Mexican authorities could exercise any control
114 over the said mines, stamp-mill, machinery, and other property abandoned by "La Abra Silver Mining Company," at Tayoltita, and instructed me that the said purchase made of the tools and machinery named, and then in use by my com-

pany, was all right, if I would settle the matter with him, as representative of the Government of Mexico, for the value of said property; and as I was superintendent of the Durango Company, he said he was district judge—representing the Government of Mexico in this matter, could dispose of said property to me, by lease, or by sale, as he had, he said, received recent instructions on that point from the authorities of the Supreme Government. Finally, our interview ended by the sale, or lease of said property, for use by my company—the Durango Silver Mining Company—and he, Judge Quiros, made out to me, and he signed a written authority for me to take down and use for the benefit of my said company, all of the machinery left there, including the stamp-mill of claimant, at Tayoltita, and to put it in use at San Dimas, making me responsible to him or to the Mexican Government, for the appraised value of the same, or for its return to Mexican authorities, by paying the use of it, to be appraised also. I cannot remember the exact language of the lease, or sale; but this is the substance of it. He explained, at the same time, that in case said "Abra Company" should get a judgment against Mexico, as it seemed likely they would do before said Joint Commission at Washington, that said mines, hacienda, machinery, and stamp-mill then becomes the property of Mexico; and that it was, he said, his business, as district judge, to look out only for the interests of Mexico, and to secure, as nearly as possible, the value of said machinery and stamp-mill for the Government. He executed the lease, or paper obligation, authorizing me to take from Tayolita such parts of said mining property as my company desired, or all that was left of said stamp-mill and machinery, if I wished it all, and to remove the same to San Dimas for use by the Durango Company; and he authorized me also to keep and make use of the parts of said machinery and tools which I had bought of irresponsible or unauthorized parties, holding me responsible to him—Judge Quiros—or Mexico, for the appraised value of that also, or for the value of its use as I might elect. I have a part of said machinery, so leased to me, in use now at San Dimas, and I intend to remove the balance of said stamp-mill, and all that remains of the machinery and mining tools of said "Abra Company" to San Dimas, or to such other place in that district as may be most profitable to my company, in order to work said mill and machinery under the lease, or written obligation referred to by and between said district judge and myself, to have the privilege of paying to Mexico the appraised value, and owning the same, or of paying Mexico for the use of said stamp-mill, tools, and machinery, and of turning over to the Mexican Government the same again, when said suit shall be decided by the Commission at Washington. I do not remember, now, the exact language of said sale or lease, for I have not seen it since the day it was taken, but I have stated its substance correctly.

Question 6th. Did said Judge Quiros receive from you any money, or other thing of value for executing said bill of sale, or paper obligation, authorizing you to take down and make use of said company's stamp-mill, tools, and machinery?

Ans. Yes; I sent him a present of twenty dollars in money, and I also sent him a week's rations for himself and his employés, which he received.

115 Question 7th. Will you now please present to the consul the written obligation, referred to as having been executed by Judge Quiros, selling or leasing for use said property of claimant, in order that a certified copy may be taken by the consul, and filed with this deposition at Washington?

Ans. It is not possible for me to present that paper called for by the question, because I did not bring it with me, as I would have done if I had known that it would have been required; or, had I anticipated this examination, of which I had no knowledge or intimation until I was notified to appear here for examination. I left that paper with the other papers of the Durango Mining Company, of which I am superintendent, all in charge of Dr. Stoeck, in my absence, and it would be impossible for me to produce the paper, as it is in the mountains, about two hundred miles from this place, and it would require, probably, a month to produce it here, if indeed it could be done at all, as the rebels have taken Mazatlan, and the entire road to the district of San Dimas, since I came down here and from the present political excitement and uncertainty, I cannot say when I may find it convenient or safe to return, as my feelings and views are known to be in favor of the government, or constituted authorities.

I was fifteen days coming from San Dimas to Mazatlan, including delays and hindrances occasioned by political disturbances.

Question 8th. Did the attorney of "La Abra" Company, or other person, request you to come to Mazatlan and give this deposition, or was the giving of your testimony in this case suggested to your mind, or thought of by you, before you arrived in Mazatlan?

Ans. This question is answered by my reply to one of the foregoing questions. I think I have said that I knew nothing of the purpose of the attorney for "La Abra Company" to have me examined, until notified in writing by the consul to appear and be examined in the case; nor had I the remotest idea of it. I came here with

my sick wife and family, to get them on board the steamer for New York, and also to purchase supplies for the Durango Company.

Question 9th. What is the character of the mines owned and worked by said "Abra Company," at Tayoltita, which you have named, so far as regards their richness of metal, and supply of the same.

Ans. It is good. They are undoubtedly among the best and most valuable of all the silver mines of Mexico, and some of them are not unknown to fame for their rich and abundant productions. I refer more particularly to "La Abra," "El Rosario," "La Talpa," and "El Cristo" veins. I should like to own them, if it were possible to raise capital to work them, and to secure proper protection from the local authorities, which I think improbable, if not impossible, in Tayoltita, to secure any protection.

Question 10th. Did you, when at Tayoltita, observe the piles of silver ores on the patios of the company, so as to be able to state the quantity and value of the same? If so, state it.

Ans. I think not; I did, however, more than once, observe said ores. The company left great piles of them on the "patios" which they had taken out and packed down from their said mines, and the average of them were said to be very rich of silver metal, with a small percentage of gold; but I also observed, there, unmistakable evidences of that which had been a common report for a long time, that those piles of ores had been torn down and the richest of their metals culled out and carried away, leaving upon those extensive "patios" the poorest of them, which
116 were scattered over a large surface, covering, I should say at least a quarter of an acre of ground. It was said that the company abandoned about a thousand tons of those metals, but not half of them remained when I saw them in 1870; and those that were left gave evidences of having been torn down, culled out, and rejected. I cannot state the value of those that I saw, but I think from a cursory examination of them, that even the poorest and rejected pieces would pay well to beneficiate.

Question 11th. What, in your judgment, was the value of the mines, machinery, stamp mill and other improvements belonging to and worked by "La Abra" Company, which you have named; state your opinion of their value in March, 1868, and at the present time, and also the amount of money which that company must have expended in said works, in your opinion?

Ans. I should value those mines at not less than one million dollars, in 1868, and the company's improvements at half a million more, and if they could have been held and worked by their magnificent machinery and stamp-mill, without interruption, or "prestamos," and with anything like an assurance or hope of protection, I would now value them at three or four times that amount. If the parts of the stamp-mill could be found, and put together again upon their grounds at Tayoltita, and all the machinery there in as good order as when the same was abandoned by the company, I should value the whole at four to five million dollars, not less than four million, ($4,000,000;) but I do not believe it possible ever to get that machinery together again, as the parts stolen and sold are so scattered over several mining districts in the State, and much of it partially worn out, or refitted to other machinery, so that it would, in my opinion, be better and cheaper to repurchase a new stamp-mill, and machinery, and bring it there from the United States, than go to the uncertain expense of hunting up and replacing that which was taken away from them at Tayoltita. I should value the ores taken out of said mines, and abandoned by that company, in 1868, at half a million dollars, judging from what I have seen there myself, and have heard stated by reliable miners in that district, and also by common report, or public opinion, which is seldom in error among practical miners in such cases. The refuse ores which have been culled over and rejected, and which still remain upon the ground, are worth but little. They might beneficiate as high as a hundred thousand dollars, but I think not to exceed that amount. I believe four-fifths of the ores of value have been stolen from the company's "patios," and sold in other places. This, too, I only know from common report, which I believe to be true, from all the circumstances made known to me by Mexican miners at Tayoltita.

Question 12th. Do you know whether *Marcos Mora*, *Macario Olivera*, or other Mexican authorities of San Dimas, in 1866, 1867, and 1868, were enemies to "La Abra" Silver Mining Company, or whether any of said authorities encouraged Mexican miners to commit depredations upon said company or their property at Tayoltita, or whether said authorities, or any of them, incited disturbances, or encouraged the expulsion of said company from their mines, and from the country, in the years named?

Ans. I do not know of my own knowledge, but I have heard that all those things were done there by the authorities named. I have heard it stated there that Macario Olivera, prefect in 1868, and Marcos Mora, whom he succeeded, were enemies of "La Abra" Company, and that they, and some other authorities in the district acted

badly, and favored the expulsion of La Abra Company, but of this I have no personal knowledge.

117 Question 13th. How many foreign companies were there doing business in mining, in San Dimas district, in 1866 and 1867, and how many are now left in the district of San Dimas? Is there any at all except the Durango Company, which you represent as superintendent?

Ans. There were a large number of American mining companies in that district in the years named; but only the Durango company now remains.

Question 14th. How is it that your company can remain there without disturbances?

Ans. We have had disturbances and difficulties, but we have found it necessary to submit to all exactions, whether lawful or unlawful, which makes it to the interest of the authorities to keep us there; we have found out how to manage and *interest them*, otherwise I suppose my company would be compelled to leave like the others, without a doubt.

Question 15th. Do you know Matias Avalos, of said district?

Ans. Yes; I know him very well; he is and has been for the last four years in the employ of the Durango Company, of which I am superintendent; he is now with me in Mazatlan, as muleteer and mozo.

Question 16th. What is the character of the said Matias Avalos for truth and veracity, in San Dimas, or where he is best known?

Ans. It is good. I look upon Matias Avalos as a strictly honest, truthful, and trustworthy man. I have frequently entrusted him with large amounts of silver coin, which he has always brought safely to the company from Mazatlan, and also with bullion from San Dimas to the mint at Durango, and Culiacan, and he never, as many others have done, reported a loss, which he might have done without detection or suspicion; but his reports are always candid and truthful. He is regarded as a strictly honest, conscientious, and reliable man.

Question 17th. Have you heard anything about witnesses having been suborned by Mexican authorities of San Dimas, to testify for the defence against their will, and in contravention of what said witnesses had previously testified to on the part of claimant in this matter, by threats of inflicting a fine of one hundred (100) dollars and imprisonment, if they did not come to court and testify against claimant? If you know of any such case, state the names of such authorities and of the witnesses so threatened and suborned; and, if you know, what was the result of the same?

Ans. I have heard of such threats being made by Judge Milan, and by the said Judge Quiroe, who succeeded him in office as chief magistrate of the district of San Dimas.

These threats were made against Matias Avalos, and James Granger, both of whom, it was said, had previously testified on behalf of the claim of "La Abra" Company; and I heard Matias Avalos say that said district judge wrote down a statement, for him to sign, on behalf of defendant, which was against his will, and not true in point of fact; that said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company, in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he, the judge, said there was "too much noise in the court room." I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

118 I have heard of other and similar cases in this matter, but I have no personal knowledge of the facts. I believe the statement of Matias Avalos, however, to be true, for reasons stated in my answer to one of the foregoing questions (No. 16.)

I heard the said Granger say that if he had not complied with the demand of the judge of first instance of San Dimas in testifying against "La Abra Company," the claimant, that he knew he would have been compelled to give up his mining interests in that district, and leave the country; which he said he could not afford to do, and therefore he was compelled to sign the testimony. This is all I recollect in reference to the matter.

Question 18th. Have you any interest, direct, contingent, or otherwise, in the claim of said "La Abra Silver Mining Company," to support which your testimony is here given, or are you agent or attorney for said company, or for any person having such interest?

Ans. No, none whatever; nor am I agent nor attorney for claimant, nor for any other party in interest.

Question 19th. Was your authority to take from Tayoltita, the said stamp mill, machinery, and other property of claimant, and to make use of the same in other parts of the State, given verbally, or only in writing; and was said property turned over to you with a view to your protecting the same as consul of the United States, for the benefit of claimant, or was said authority given to you only as superintendent of the

Durango Mining Company, with the privilege of paying the appraised value, and of owning the same, or to pay for its use to said authorities, or to Mexico, as a business transaction between said authorities and your company?

Ans. The latter is the fact. It was a purely business transaction between Judge Quiros, representing the Republic of Mexico, and myself, as superintendent, representing the Durango Mining Company. There was nothing said by Judge Quiros, to my recollection, about protecting said machinery, stamp mill, and other movable property of claimant. The transaction was not with me as consul; but, as I have stated, the property was leased for use to the Durango Mining Company, and for a valuable consideration, with the privilege of paying for the same at an appraised value by disinterested parties.

This authority was given to me by Judge Quiros, verbally, as well as in writing, and I have acted upon it in good faith, believing then, as I still feel justified in believing, that he must have had authority from the Supreme Government to act in the premises, or otherwise it is reasonable to suppose that he never would have taken such a step in the matter as that of selling or leasing out this property, under the circumstances, to be worn out by use.

["Interlined in the original:" Page 2, lines 16 to 17, the words "a son;" page 2, lines 29 to 30, the word "an;" page 6, lines 17 to 18, the word "the;" page 7, lines 5 to 6, the words "the stamp;" page 7, lines 27 to 28, the word "said;" page 9, lines 32 to 33, the word "them;" page 11, lines 22 to 23, the word "be."

[Erased: Page 1, third line from bottom, "bef.;" page 4, line 42, "Buena Vista;" page 15, line 12, the word "said."

["The above corrections were noted before signing, with the consent of deponent, and in the presence of the subscribing witnesses."]

(Signed,) C. B. DAHLGREN.

Witness:

(Signed,) H. DIAZ PENA.

119 Sworn to and subscribed before me, this 18th day of September, A. D. 1872.

(Signed,) ISAAC SISSON,
U. S. Consul.

[Seal of the U. S. Consulate for Mazatlan.]

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, Mexico, ss:

I, Isaac Sisson, consul of the United States of America, in and for the port of Mazatlan and the dependencies thereof, do hereby certify that I have no interest, direct, contingent, or otherwise, in the claim of "La Albra Silver Mining Company," in support of which the foregoing testimony is taken; that I am not the agent or attorney of said company, nor of any person having such interest; that I am competent and duly authorized under the laws of the United States, and by special orders from the Department of State for the same, to take depositions to be used in evidence before the Joint American and Mexican Commission, in session at Washington, under the treaty of July 4th, 1868; that Charles B. Dahlgren, the witness herein, personally appeared before me, at my consular office in Mazatlan, State of Sinaloa, Mexico, on the day and at the time hereinbefore stated, and that he was by me first duly sworn, as a witness on behalf of claimant, to state the truth in answer to said interrogatories, propounded by me, touching the merits of the above-entitled cause, as hereinbefore set forth, and was thereafter duly examined, and that the foregoing testimony was given by him, and thereupon reduced to writing by H. Diaz Peña, in my presence; and I further certify that said H. Diaz Peña, who transcribed said testimony, has no interest, direct, contingent, or otherwise, in the said claim, and is not the agent or attorney of said claimant, nor for any person having such interest; and I do further certify that said Charles B. Dahlgren, the witness aforesaid, is what he represents himself to be in the foregoing deposition, and that he is a man of the highest respectability, well known to business men of Mazatlan as a competent and responsible person, and that full faith and credit may be given to all of his acts, and to his testimony in this cause; that the foregoing deposition, when completed, was carefully read over by me to said witness, before signing, in presence of the subscribing witnesses, and was by me corrected in every particular desired by him, and he then and there declared his testimony as hereinabove set forth.

Given under my hand, and the seal of this consulate, the day and date above mentioned.

(Signed,) ISAAC SISSON,
U. S. Consul.

[Seal of the U. S. Consulate for Mazatlan.]

Rebutting testimony before the American and Mexican Joint Commission in session at Washington, D. C., under and by virtue of the treaty of July 4th, 1868. Deposition of Nicholas Alley on behalf of claimants, La Abra Silver Mining Company vs. Republic of Mexico.

Doc. No. 44 G.

REPUBLIC OF MEXICO, CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, ss:

At ten o'clock a. m. this 25th day of September, A. D. 1872, personally appeared Nicholas Alley, who having been first duly sworn to state the truth with refer-
120 ence to what he may know touching the merits of the above-entitled claim, and the manner and mode of taking defensive testimony by Mexican authorities, deposes and says:

My name is Nicholas Alley; I am 25 years old; I was born in Fayetteville, in the county of Lafayette, in the State of Alabama, in the United States of America, and I am a citizen of the same; I have resided in Mexico for five years last past; my occupation during the principal part of that time has been mining, and in the cotton factory business; my present occupation is that of superintendent of the "Mazatlan Cotton Factory." I know well the claimant "La Abra Silver Mining Company," of Tayoltita, Durango, by reputation, and I am personally acquainted with A. W. Adams, the attorney of claimant, and was with him in the city of Durango, in the month of July last, 1872, where said attorney was engaged in procuring from the records, or files of the State Department, certified copies of title papers, and also in taking the depositions of witnesses in support of said claim; that in July last deponent also became acquainted with a man in Durango who called himself "Dr. Rapp," or "Rap," and deponent knows of a personal difficulty, or encounter at Durango, between said "Dr. Rapp," "a southern man," as he called himself, and said attorney of claimant, A. W. Adams, which difficulty was commenced by said Rapp, who denounced all "Union men" as scoundrels, and boasted of having fought against the Union, and deponent heard said Rapp also denounce "La Albra Silver Mining Company," calling them bad names, he, Rapp, taking the part of Mexico against the claim of said company; and deponent further says, that some time in July last, while at Durango city, he met the said Dr. Rapp on the sidewalk in said city, and said Rapp asked this deponent to join him, Rapp, in defeating the claim of said "Abra Silver Mining Company," and deponent asked him, Rapp, how he proposed to do it, to which said Rapp replied, "join me and my plans against Adams and his company's claim, and I will show you how to do it, and we shall make lots of money out of this thing, for the authorities here are determined to defeat this claim, and they are willing to pay us liberally if we will help them to accomplish this work, which we can do easily enough;" and the said Rapp then went on to state his plan for defeating this claim, which was as follows: The District Attorney, or his assistant, he said, had engaged his, "Dr. Rapp's services, and was to pay him a contingent fee of five thousand dollars, conditioned upon the defeat of said claim," and that he, Rapp, was to have a liberal amount of money with which to procure witnesses to testify against said claim, which money was to be advanced from time to time as it might be needed, and he, Rapp, proposed to divide with deponent the contingent fee, and also a large part of the money to be advanced for witnesses, and he remarked that Mexico would advance as much as twenty dollars per head for witnesses, and Rapp said he could get Mexicans there to testify to anything he wanted them to state against said Adams, and his company's claim, for five dollars each, and we could divide the balance which would be about fifteen dollars per head; but he, Rapp, closed his proposition by saying that he wanted me "to lead off as the first witness," and I asked him what he could prove by me, and Rapp replied that he wanted me to testify against Adams and his manner of taking depositions there; that he would tell me what to say, and all the particulars, after he had consulted with the attorney or assistant district attorney for the Government, and he went on to say that he had taken an oath to ruin Adams,
121 the attorney for the company, and to defeat the said claim; and that he would do it if it should cost him his life. He seemed to be full of malignity and hatred, and determined to carry out his project. After listening to his proposition and his mode of defeating said claim, which I remember embraced a proposition to attack the character of said Adams, and his alleged illegal manner of taking proof in Durango, as stated by Rapp, I declined to join him in this infamous work.

He wanted me to testify that said Adams, attorney for "La Abra Silver Mining Company," had offered to bribe me to give testimony in favor of the claim, and I asked him how I could do that, as Adams had never proposed anything of the kind, and that he had never even offered to make me a witness for the company, as I knew nothing about the case. Rapp said "that made no difference, as no person should ever know how it was done, or whether Adams proposed it or not," and that we could make a pile of money out of this case. I told him that I had never seen anything in

the conduct of said Adams that looked unfair or improper; that he, Mr. Adams, had conducted himself and the affairs of the company at Durango in a gentlemanly and honorable manner, so far as I had been informed, or could observe while there; and that I would have nothing to do with this scheme. The said Rapp invited me to take some wine with him, and requested me to say nothing about the conversation. I made no reply to his request, but considered it my duty to tell said Adams of the trap they were setting for him, and the schemes they were concocting at Durango for his injury, and to defeat said claim, all of which I told him the same day in the presence and hearing of Colonel Clarence Key, who accompanied said Adams to Durango, as interpreter and translator, Charles Schultz, and several others, who were members of the escort, or personal guard, traveling with the said attorney, Mr. Adams. The authorities of the State offered no facilities, but tried to prevent said attorney from procuring title papers, or depositions, while there trying to do so in June and July last. I have no interest, direct, contingent, or otherwise, in the above-entitled claim, and I have no personal knowledge as to its merits or demerits, and I am neither agent nor attorney for said claimant, nor for any person having such interest. And further this deponent saith not.

(Signed,) NICHOLAS ALLEY.

Witnesses:
(Signed,) H. DIAZ PENA.
" D. DANGLADA.

[Here follows the usual certificate of Isaac Sisson, United States consul for the port of Mazatlan, to the proper taking of the above deposition, and that he knows the witness, Alley, and that his statements are entitled to full faith and belief.]

(Signed) ISAAC SISSON, *U. S. Consul.*

[U. S. consular seal.]

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122 Doc. No. 43.

[Translated.]

Deposition of Antonio de la Peña, wholesale merchant, of Mazatlan.

CONSULATE OF THE UNITED STATES OF AMERICA, REPUBLIC OF MEXICO,
Port of Mazatlan, ss:

At ten o'clock, on the morning of the second day of December, 1872, personally appeared Don Antonio de la Peña, who, having first been duly sworn to speak the truth with regard to what he knows concerning the merits of the aforesaid case, and being known to this consulate as a truthful, responsible, and competent witness, made answer to the following interrogatories.

1st question. Your generalities?

Ans. My name is Antonio de la Peña; I am 39 years old; my residence is at Mazatlan; my occupation that of a merchant; I have a wholesale grocery and provision store, and supply merchants, and miners, and others from the interior; I am a Spanish subject.

2d question. Are you the principal of the house of "Peña & Co.," successors of "Echenique Peña & Co.," of this city?

Ans. I am.

3d question. How long have you been in business here?

Ans. Twenty-three years.

4th question. Do you know the Abra Silver Mining Company, the claimant in this case, and its officers and superintendents?

Ans. Yes; I know it, and have had business with them.

5th question. State when, and how long, you have known the company and its officers; where their mines and works were located, and what was the nature and extent of your business relations with them?

Ans. I knew the Abra Silver Mining Company, by reputation, from the commencement of their mining operations, in June or July of 1865, and while they were bringing to this port, and transporting their stamp mill, machinery, and mining implements to their mines. The mines and works of the said company were located at Tayoltita, in the district of San Dimas, in the State of Durango, Mexico. I did not sell any very great quantity of goods to this company until up to the time the company left off dealing with the house of "Echeguren Quintana & Co.," which, I think, was in August of 1866, although we sold them some goods; the company did all their business with Echeguren, Quintana & Co., and some other houses in this city. From the year 1865 up to March, 1868, when their business was destroyed, we did a large

amount of business with them. We supplied this company with provisions and other articles for their mining operations at Tayoltita, and a considerable amount of money for the payment of the company's mechanics and other employees. We have disbursed, in money and provisions for the company, a total of a little more than sixty-seven thousand dollars, ($67,000.)

6th question. Have you been reimbursed by the company for all the money, provisions, and other articles which you furnished to the company for their mining operatives at Tayoltita, with exception, only, of a small amount which you recently loaned the superintendent to pay his passage to the United States, and some other expenses when the company was compelled to abandon their business in March, of 1868?

123 Ans. Yes; it has all been paid; we sent on the certificates and drafts from time to time, when we made any disbursements for account of the company, and they were all duly and fully paid, either at San Francisco or New York, in gold or silver, to the amount of sixty-seven thousand dollars. The sum of two hundred and fifty dollars ($250) which we loaned to the last superintendent, Mr. Exall, is all that remains unpaid.

Question. Have you any interest, direct or contingent, or of any other kind, to the present claim referred to by you in your deposition, or are you the agent or attorney of the company, or of any person who has any such interest?

Ans. No; I have no interest.

(Signed,) ANTONIO DE LA PEÑA.

Witnesses:

(Signed,) H. DIAZ DE LA PEÑA.

(Signed,) D. DANGLADA.

[Here follows, in the original on file, the certificate of the United States consul at Mazatlan, dated December 2d, 1872, of the proper taking of said deposition by him; and that the witness, Don Antonio de la Peña, is one of the principal wholesale merchants of Mazatlan; that he is a man of responsibility, of good character for truth and veracity, and that his statements are entitled to full faith and credit.

(Signed,) ISAAC SISSON, *U. S. Consul.*

[SEAL OF U. S. CONSULATE.] W. C. T., *Official Translator.*]

Doc. No. 45.

Before the American and Mexican Joint Commission, Washington, D. C., under the treaty of July 4th, 1868. Deposition of Don Pedro Echeguren on behalf of claimant, "La Abra Silver Mining Company," against the Republic of Mexico.

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, Mexico, ss.

At 10 o'clock a. m. this 9th day of December, 1872, before me, Isaac Sisson, consul of the United States of America, in and for the port of Mazatlan and the dependencies thereof, personally appeared Don Pedro Echeguren, a witness introduced on behalf of claimant, and being well known to me, personally, as the principal of the banking house and commercial establishment of "Echeguren Hermanos y Campañia," and being first duly sworn according to law to state the truth in relation to all he may know concerning the merits of the above-entitled cause, deposes, and in answer to the following interrogatories propounded by me, says:

Question 1. What is you name, age, nativity, citizenship, and occupation?

Ans. My name is Pedro Echeguren; my age is 46 years; I was born in Spain, and am a subject of Spain; my residence is in Mazatlan, Mexico; and my occupation that of merchant and banker.

Question 2. Are you one of the brothers, and the principal of the banking house, and of the wholesale mercantile firm of "Echeguren, Hermanos y Ca.," successors of "Echeguren, Quintana y Ca.," of Mazatlan?

Ans. Yes; I am senior member of that house.

124 3d. How long have you been engaged in said business in Mazatlan?

Ans. Over twenty years.

4th. Say if you were acquainted with the claimant, and its superintendents, from the summer of 1865, up to about March, 1868; and if yea, say how you became acquainted with said company and its officers?

Ans. I became acquainted with Mr. Thomas J. Bartholow in the year 1865. I became acquainted with said gentleman, and remember that he had to do with "La Abra Silver Mining Company," either as officer or otherwise—first, through Don Juan Castillo de Valle, of Durango, and afterwards I transacted some business for them.

5th. Did you know the names and locality of said company's mines and works, and of what said works consisted; and, if yea, state them?

Ans. It is known to me that that mining company was located in the district of San Dimas, Durango; that they worked several mines, which they owned, and also some haciendas for beneficiating ores, purchased from Don Juan Castillo de Valle, and Don Ygnacio Manjarrez.

6th. Is it true that the money was paid over the counter of your banking house in Mazatlan, by the agents of said "Abra Silver Mining Company," for the mines owned and subsequently worked by said company at Tayoltita, in said district of San Dimas? And, if that is true, how much money was so paid, and by whom as agents of said company, and to whom was the said money paid for said mines?

Ans. Yes; it is true, and I recollect that I also acted as interpreter for the parties at my banking-house, on that occasion, in Spanish and English. The amount of money agreed upon for the said mines and haciendas, bought from Don Juan Castillo de Valle, by General Bartholow and Mr. David J. Garth for that company, was paid to Mr. Castillo de Valle himself, in certificates of deposit and drafts on San Francisco, which we cashed, and they were duly paid when presented by our house, in San Francisco. The first amount so paid was fifty thousand dollars ($50,000) gold coin. The second amount paid by the same to the same, for mines and haciendas, was eight thousand five hundred dollars ($8,500) gold coin.

7th. Did you receive from one of said agents of "La Abra Silver Mining Company," for safekeeping in your bank vaults, the perfected title deeds and evidence of original denouncements, soon after they were made over to said agents for the use of said company, by Don Juan Castillo de Valle? And, if so, who was the agent so depositing said deeds with you, and what became of them?

Ans. Yes, I did receive from General Bartholow, for safekeeping, the title papers referred to in the question, delivered to him by Don Juan Castillo de Valle, and which were turned over to A. W. Adams, attorney for said company, in April, 1872.

8th. What amount of gold or silver coin was disbursed by you, or sent through your banking-house by said company for its use in opening, improving, and working said mines, between the month of June, 1865, and March, 1868, inclusive; say, also, the entire amount of your disbursements, both in money and supplies, for the use of said company, in carrying on said works at Tayoltita, from the said purchase of its mines, in 1865, up to its abandonment of the enterprise in March 1868?

Ans. From July, 1865, to August, 1866, there was paid, or advanced by my firm to La Abra Silver Mining Company's agents, in supplies for its miners, money and freight on machinery forwarded to said mines, in the aggregate, fifty thousand one hundred dollars, ($50,100,) making, in all, one hundred and eight thousand six hundred dollars ($108,600) in gold and silver coin, paid over my counter for said company's mines and works at Tayoltita, Durango, for all of which we were duly reimbursed by the company, on the presentation of our certificates and drafts, at San Francisco and New York. After August, 1866, this company transacted its business, and received a part of its supplies and money through other houses. I believe the house of "Echenique, Peña y Ca." was one of them, and I don't know how many others. Much of the company's supplies, machinery, and even money, was received from the steamer or vessel direct, and their mule teams packed at the wharf for their mines, without being consigned to any house here. This was going on while we were doing business for the company, but I cannot say what proportion or amount of such supplies were so received.

9th. What do you know about impressments of men, money, and supplies belonging to said company, by the military authorities of this Republic, while the same were on the road between this city and the mines of said company at Tayoltita, at any time between June, 1865, and March, 1868; or of the seizure of said company's money, mule trains, and supplies, as "prestamos," by said military authorities?

Ans. I recollect to have heard from the first superintendent, General Thomas J. Bartholow, of the troubles and difficulties he encountered, soon after they occurred, on the road from this place to Tayoltita, in 1865 and 1866, when attending to the transportation of the company's machinery and supplies, being continually detained on the road by the said military people, and that he had to contend with them, and to pay large amounts of money, "prestamos," in order to be allowed to go on; and that these acts were repeated several times on the road, and although I did not witness those acts, they were common during the time referred to in the question, and those molestations and hindrances, and the losses of this company in that way were publicly spoken of here, and believed to be true.

10th. Was there, within the time mentioned, from 1865 to the spring of 1868, any protection of foreigners from "prestamos," or "forced loans," or the seizure of their supplies and workmen by the military authorities of Mexico, in the States of Sinaloa and Durango, or any effort made, or disposition shown by the National or State authorities to protect foreign miners, farmers, and merchants from such outrages by the Mexican military authorities operating in these States, even when such protection was imploringly and lawfully invoked?

Ans. In that time, as well as in the present period, I think it may be said that very little or no protection was so extended, or offered to foreigners, either personally, or to their interests. In the destructive state of things in which, generally in this country, such inhabitants, with few exceptions, happened to be personally molested, either by the rebel parties or by the legal authorities, both of them helped themselves freely to the property of Americans, and other private parties. "Prestamo" is the general name given, but "forced loan," I think, is not the proper signification, as often the property disappears without any previous notice to the owner, and without any hope of recovery or indemnification. Under these circumstances, it is of no use to seek
126 protection; all we can do is to keep silent, and bear the consequences, hoping eventually to find some relief.

11th. Are not the said military authorities still exacting and collecting such "prestamos," or "forced loans," up to this date, from foreign miners, bankers, and merchants, with which to support the army of the republic? and, if yea, is it true that they exact and collect from you, and your house, heavy forced loans for that purpose? And is there any protection against these outrages or robberies, given or offered by the general Government of Mexico, or any effort made, or disposition shown, by the State or national authorities here, to extend such protection to foreigners, when invoked to do so? Say also what amount of money and goods, or other property, was taken from you and your house, by "forced loans," or "prestamos," exacted and collected by the national or State military authorities, since July, 1865?

Ans. It is really the case, that in this part of the country private interests bear the expense of the federation army, and employees and foreign merchants, miners, and farmers, are frequently lending large amounts of money, on what is called "prestamos," not spontaneous, but "forced loans," and they are compelled to do so for fear of being molested, or personally injured, and it may be said that there was, and is, no protection, neither for such individuals nor for their interests, by any of the authorities of these States. The different sums of money we have disbursed to said military authorities upon such loans, or "prestamos," from 1865 to 1871, exceeds one hundred and fifty thousand dollars ($150,000,) and during the past year ninety thousand dollars, ($90,000,) making an aggregate of upwards of two hundred and forty thousand ($240,000;) this includes all "prestamos," or forced loans from my house during the seven years last past, as shown by the books of my house, of which amount the rebels or "pronunciados," have taken from us thirty-one thousand dollars, ($31,000,) which the legally constituted authorities refuse to recognize, by their usual *promises to pay*.

12th. Would you have considered it prudent, advisable, or safe for La Abra Silver Mining Company to have returned, or attempted to return, to their said mining operations at Tayoltita, or to make any further investments there, at any time since the forced abandonment of the same in 1868?

Ans. Under the circumstances then, or now, I would not.

13th. Have you any interest, direct, contingent or otherwise, in the above-named claim, to which your deposition relates, or are you either agent or attorney for claimant, or for any person having such interest?

Ans. No; certainly not.

(Signed,) PEDRO ECHEGUREN.

Witnesses:

(Signed,) H. DIAZ PENA.

" D. DANGLADA.

[Here follows, in the original, the certificate of Isaac Sisson, U. S. consul, that the deposition of the witness, Don Pedro Echeguren, was regularly and lawfully taken; that said witness is one of the largest bankers and merchants of Mazatlan—a man of good repute for truth, and that his statements are entitled to full faith and credit.

W. C. T., *Official Translator.*

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127 Doc. No. 42.

La Abra Silver Mining Company versus the Republic of Mexico. Before the American and Mexican Joint Commission, in session at Washington, D. C.:

CONSULATE OF THE UNITED STATES OF AMERICA,
Port of Mazatlan, Mexico, ss:

I, Isaac Sisson, consul of the United States of America, in and for the port of Mazatlan and the dependencies thereof, do hereby certify that, yesterday, the 13th day of December, 1872, at about 6 o'clock p. m., I was standing in the wholesale grocery and provision store of Lewels & Co., in this city, Mazatlan, Mexico, when General

A. W. Adams, an American citizen, came into said store with two or three depositions in his hand, which had been taken before me, in behalf of American claimants against the Republic of Mexico, to be presented as testimony before the American and Mexican Commission at Washington, under the treaty of July 4th, 1868, and I took one of said depositions in my hand, given by the witness Don Antonio de la Peña, who is one of the largest wholesale grocers and supply merchants here, and one of the most respectable citizens of Mazatlan, who had testified before me in behalf of "La Abra Silver Mining Company" against Mexico; that said deposition was neatly gotten up, and was securely fastened down with ribbons under the seal of the United States consulate; that I opened said deposition, which was written in Spanish, and read aloud one or two of the answers of the witness, in which he stated the amount of his disbursements for said company, while working its mines in the district of San Dimas, Durango, and I also read aloud, in Spanish, the title page of said deposition against the Mexican Republic, and a Mexican clerk in said store, asked Mr. Adams, the attorney of said company, in Spanish, if he intended to send those depositions forward to Washington by the steamer due at Mazatlan the 14th, (to-day,) and I answered the clerk, in Spanish, that he would send them forward by that steamer on her arrival, and as I laid the said deposition on the counter, at that moment an elderly Mexican who had listened to the reading of the title page of said deposition, and to the statement, in Spanish, that it was to be forwarded to Washington the next day, suddenly snatched said deposition from under my hand, and tore it into pieces, breaking the ribbons fastened under the seal, and tearing it up, started to leave the house with the pieces in his hand, but the said attorney, Mr. Adams, ran after said Mexican, and took from him, by force, the torn pieces of said deposition, when said Mexican fled and ran away from said store, before it was possible for said attorney, or myself, to get his name, and the clerks in said store of Lewels & Co. were asked by said Adams if they knew the Mexican who had snatched and torn up the said deposition in my presence, and from under my hand, but they all denied that they knew him, and I have not yet been able to ascertain his name. As this malicious-looking Mexican had the appearance of a man of intelligence, it was evident to my mind that he, having attentively listened to the reading of the title-page of said deposition, in favor of "La Abra Silver Mining Company, contra La Republica de Mexico," wickedly determined that there should be one deposition less to go forward against his country, and, by this unworthy act of snatching and tearing up this deposition, that he
128 would contribute to the defert of said claim. I can conceive of no other motive to induce said Mexican to commit such an outrage against an American claimant; and having acted as magistrate in taking said deposition, I feel it my duty, as representative of the United States Government, to give this certificate, which I do at the request of the attorney for claimant, to show the desperate means resorted to defeat the claims of American citizens.

Given under my hand, and the seal of the consulate of the United States, this 14th day of December, A. D. 1872.

(Signed) ISAAC SISSON, *U. S. Consul.*

[Seal of the U. S. consulate for Mazatlan.]

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129 [NOTE.—For the convenience of the Commission, La Abra Silver Mining Company hereby presents both sides of the case, in print. The following are translations of all the documents offered in evidence by the Mexican Government in this case, and filed as copies of the originals retained at the capital of Mexico.]

DEFENSIVE EVIDENCE.

Filed October 30, 1873.

EXHIBIT No. 2, (taken in 1870-71.)

[Translated.]

[Section of America.] Republic of Mexico, Government Secretary's Office of the State of Durango—office of the Secretary of State and Bureau of Foreign Relations—section of America.

The "Abra Silver Mining Company" has presented a memorial before the Mixed Commission, setting forth the following: [here the memorial is inserted,] which is transcribed in order that you may be enabled to procure from the proper parties, all

information and documents that may tend to throw light upon the acts set forth in said memorial.

Independence and liberty. Mexico, December 2d, 1870.

(Signed,) LERDO DE TEJADA.

To the Governor of the State of Durango.

The above is a copy of the original, to which I certify, on account of the absence of the secretary.

DURANGO, Dec. 22d, 1870.

(Signed) J. GEROMINO HERNANDEZ,
Chief Officer.

SAN DIMAS, *January 15th*, 1871.

Comply with the order of the Superior Government of the State, as conveyed in the communication of the 2d of December ultimo, and to this end examine all persons who are impartial that may be found having a knowledge of the transactions set forth in the proceedings instituted by the persons comprising the Abra Mining Company of this district, and, upon concluding such examination, remit a succinct account of the same for the purposes that it may serve.

So ordered, decreed, and commanded by the judge of 1st instance of this district, and signed with the assistants.

(Signed) GIL RUIZ,
GUEVARA,
TRINOTED SAINZ.

Deposition of Patricio Camacho.

130 On the sixteenth of the present month and year appeared before this tribunal, of which I have the charge, Patricio Camacho, called to testify in this case, who, after having been sworn to tell the truth as far as his knowledge will permit, in relation to the matters about which he might be interrogated, made answer to the questions propounded to him in the following terms:

1st. State your name, condition in life, occupation, residence, and age.

Answered, that he is called as above stated; is more than seventy years of age; married; a miner by occupation, and resident of this mineral district.

2d. State whether you have any knowledge of the mineral district of Tayoltita, situate to the southwest of this mining district, and forming a part of this jurisdiction? How long ago that you were acquainted with said district, and who were the owners of the Luz, Cristo, Rosario, Ynocentes, and Nuestra Srade-Guadalupe mines, until they were taken possession of by the American companies, in 1865; state also what profits or losses to the anterior owners, resulted from said mines, and upon what conditions the agents of the American company might have acquired them.

Answered: That he has been acquainted with the mining district of Tayoltita since his infancy; that before the mines which have been named over to him became the property of the Americans, they were owned by D. Juan Castello de Valle, and D. Ygnacio Manjarrez, to whom they were productive of some profits, but to what amount he does not know.

3d. State, if you know, and why you know, that the American company directed their attention principally to the Rosario mine; if they destroyed the *haciendas* for beneficiating, erected at a great cost by their former owners, and if they brought costly machinery to answer in their stead; whether the company dedicated themselves to the working of the mines, and at great cost succeeded in taking out an immense number of cargas of ore which would not pay; and that for this reason, or because they could not agree with the operatives as to the manner of paying them wholly in goods, they suspended the working of the mine? Whether at this time the superintendent of the American company gave permission to D. Guadalupe Soto to take out whatever of ore he might be able, and that he took out sixty cargas, which would not pay him for beneficiating it; whether these ores, notwithstanding that they were abandoned, are still to be found as they were left in the hacienda, on account of being nothing but pure tepetate and rock, of no value; whether after this happened the superintendent, Granger, sold everything saleable that there was left in the hacienda, not leaving a tool or thing that he did not take away and dispose of for whatever price was offered?

Answered: That the American company directed their attention to the Rosario mine, on account of what it yielded to its former owners, Castillo & Manjarrez; that he knows from personal observation that said American company rendered the hacienda unserviceable for beneficiating purposes by removing the fixtures, &c., therefrom, with the idea of rendering it better with the machinery they erected, which is still there, and which is of no account, except to the said company, whenever they may again commence to work; that he can testify that these Americans mined a

large quantity of useless ore, which still exists in the patio of the hacienda; that it is true that it was on account of their bad management in the working of the mines, and not being able to get the operatives to work for goods, that they abandoned their mining operations; that it is true that D. Santiago Granger gave permission to D. Guadalupe Soto to take out all the ore he could, and that what he took out did
131 not pay him for beneficiation; that these ores, together with the large quantity already spoken of, are to be found in the hacienda; that D. Santiago Granger sold, as before explained, tools and other things belonging to the hacienda.

4th. State if it is publicly and notoriously known that the said Abra Company, and other companies that have worked mines in this district, have been able to carry on their operations peacefully, and without molestation, either on the part of the populace, or by the military of the State, and that if American citizens are now working the Candelaria and Bolaños mines without being interrupted by any one, [illegible] without having any reason to complain of such authorities, but that, on the contrary, if they do not enjoy the same protection as any Mexican enterprise?

Answered: That all contained in the interrogatory is true.

5th. State whether it be true that the Americans have not been favorably looked upon; have been persecuted and threatened with assassination; and whether, on the contrary, they have not been held in high esteem by the people of the country, on account of their unselfishness in advancing their interests by the operations that they are accustomed to carry on among themselves?

Answered: That what has just been inquired of him is true.

6th. State whether it is true that on account of the destruction by the Americans of the hacienda of Tayoltita for beneficiating ores, according to Mexican customs, said Americans have brought on their own ruin, and have rendered invaluable, and almost entirely caused to be abandoned, the said mining district of Tayoltita, for the reason that miners, who otherwise might have taken out somewhat of ore from some of said mines, could not make it pay them when they have to transport the same to this place to be beneficiated in these haciendas?

Answered: That it is true.

Thereupon the proceedings in connection with the taking of this disposition were concluded, to which, after having been read to him, the deponent certified and signed with me, the judge, and the assistant witnesses.

(Signed,) PATRICIO CAMACHO.
" GIL RUIZ.
" GUEVARA.
" ESTANISLAU CALDERON.

On the 19th of January, 1871, personally appeared the witness, Bartolo Rodriguez called to testify in this case, who after being sworn to tell the truth, as far as he might know or be interrogated, was questioned and made answer as follows:

1st. State your name, age, condition in life, occupation, and residence.

Answered: That he is called as herein stated; is 41 years of age; married; by occupation a miner, and a resident of this mining district.

2d. State whether you are acquainted with the mineral district of Tayoltita situated four leagues from this head of jurisdiction, to the southwest, and forming a part of said jurisdiction, and also how many years you have known said district; state also who were the owners of the Rosario, Luz, Cristo, Los Ynocentes, and Nuestra Señora de Guadalupe mines, before the same came into the possession of the American companies in 1865: what were the profits or losses which resulted from said mines to such former possessors, and upon what terms said mines were acquired by the agents of the American Company?

132 Answered: That he has known the mineral of Tayoltita for fifteen years; that the owners were D. Juan Castillo and D. Ygnacio Manjarrez, who worked the mines that have been mentioned to him with profit, and that these afterward sold them to the American company.

3d. State whether you know, and why you know, that the American company directed their attention principally to working the Rosario mine; that they destroyed the haciendas for beneficiating ores, built at a large outlay by their former owners, and brought out costly machinery to substitute in their places; that the company engaged in working the mine, and at great cost mined an immense quantity of unprofitable ore; that for this reason and on account of not being able to agree with the operatives as to the manner of paying them wholly in goods, they suspended the working of the mine; that at this time the superintendent of the American company gave permission to D. Guadalupe Soto, to mine all the ore he could, who, in accordance with such permission, took out sixty cargas which did not pay him for beneficiation; that these ores, notwithstanding they were abandoned, are still in existence in the hacienda were they left them, for the reason that they are nothing but *tepetate* or rock non-productive of silver; that the superintendent, D. Santiago Granger, after-

ward sold all of everything saleable that remained in the hacienda, not leaving a tool or thing that he did not dispose of for whatever price was offered him?

Answered: That it is true that the American company gave their attention to the Rosario mine on account of knowing the yield of silver that D. Juan Castillo was obtaining therefrom, and that they destroyed the haciendas that were built in order to replace them with machinery; that from the works which they put into operation in the mine, they took out a large amount of ore, which still remains for the reason that it is of no account; that they suspended their operations because they did not wish to pay, except in goods; that of the ore, which he to this day remains, they gave D. Guadalupe Soto permission to take whatever he might choose to beneficiate, and that he took accordingly several cargas which did not pay him for beneficiation; that he is certain that the superintendent, D. Santiago Cranger, has sold all that he could of what there was in the hacienda.

4th. State if it is publicly and notoriously known that the Abra, and other American companies that have carried on mining operations in this mineral district, have been enabled to do so peaceably and without having been molested by any demonstrations on the part either of the populace or the military, and if Americans are now working the Candalario and Bolaños mines without being disturbed by any one, and without there being cause of complaint on their part against such authorities, but that if on the contrary they do not enjoy the protection that said authorities are able to give to any like operation carried on by Mexicans?

Answered: That everything is true as contained in the interrogatory.

5th. State if you know that the Americans have not been treated well, or that they have been persecuted or threatened with assassination; but that if, on the contrary they have not been held in high esteem by the people of the country on account of their disinterestedness and the advantageous business sometimes transacted between them?

Answered: That what has been asked him in the interrogatory is true.

6th. State whether it is true that on account of the hacienda for beneficiating
133 ore according to Mexican custom, in Tayoltita, having been destroyed by the Americans, happened their own destruction, and was also the cause of the ruin and almost entire suspension of said mineral district, for the reason that, such being the case, the miners who otherwise might have worked some of the mines do not find it profitable to pay for the transportation of ores to the haciendas of this place?

Answered: That it is true.

Whereupon the proceedings in the matter of this deposition were ended, to which, after being read to him, the deponent affixed his signature with me and the assistant witnesses.

(Signed,) GIL RUIZ.
" BARTOLO RODRIGUEZ.
" GUEVARA.
" ESTANISLAO CALDERON.

Deposition of Ramon Aguirre.

On the 26th of January, 1871, personally appeared the witness, Ramon Aguirre, called to testify in this case, who, being sworn to tell the truth in regard to all he might know, as interrogated, made answer to the questions as follows:

1st. State your name, age, condition in life, occupation, and residence?

Answered: That his name is as above stated; is more than 30 years of age; married, and a resident of this place.

2d answered: That it is more than fifteen years since he became acquainted with the mineral district of Tayoltita; and that he knows the owners of the mines that have been named over to him to have been Juan Castillo de Valle and D. Ygnacio Manjarrez, who afterward, with the hacienda and everything connected therewith, sold the same to the Americans; that said mines were productive of profit to said Castillo & Manjarrez, but to what extent he can not say, as he is not informed.

3d answered: That the American company gave the most of their attention to the working of the Rosario mine, because they were aware of the amount of silver extracted therefrom by Messrs. Juan Castillo and D. Ygnacio Manjarrez. And the Americans, thinking to make more silver, set themselves to work to take down the haciendas that had been built for beneficiating purposes, and erected in their stead a large mill; all of the wood work of which haciendas they burnt up; that in carrying on their operations, they mined an immense number of cargas of ore, at great cost, which ore will not pay; that they suspended operations in the mine because the operatives would not agree to be wholly paid in goods; that at this time the superintendent of the American company gave permission to D. Guadalupe Soto to take all the ore he could of

that which is to be found; and that he accordingly took out sixty cargas, which would not pay him to beneficiate; that the superintendent, D. Santiago Granger, has sold all that was salable in the haciendа, and left nothing that he did not sell out for whatever price he was offered.

4th answered: That everything as contained in the interrogatory is true.

5th answered: That the American citizens have never been looked upon unfavorably, nor persecuted, nor threatened with assassination, but that they have been held in high esteem by the people of the country.

6th answered: That the Americans, on account of having destroyed the haci-
134 endas for beneficiation, in accordance with Mexican custom, brought ruin upon themselves, and almost succeeded in suspending mining operations entirely in the said mineral district, for the reason that those miners who could otherwise have worked some of the mines could not make it pay to transport their ores to the haciendas in this place; that the foregoing is the truth as regards the interrogatories which have been propounded to him, which statement was then read to him, when he certified, and I (the judge) signed his name for him, as he was not able to do so, with myself and assistant witnesses.

(Signed,) GIL RUIZ.
" GUEVARA.
" ESTANISLAO CALDERON.

Deposition of Aquilino Calderon.

On the 31st day of the same month and year, personally appeared the witness Aquilino Calderon, called to testify in this case, who, after being sworn according to law to tell the truth in regard to what he might know and be interrogated, made answer to the questions propounded to him as follows: (which questions are the same as those asked the previous witness, Ramon Aguirre,) viz: To the first he answered:

1st. That he is called as has been stated; is more than 45 years of age, married, by occupation a miner, and a resident of this mineral district.

2d. That he has been acquainted with the mineral district of Tayoltita for several years; that D. Juan Castillo and Ygnacio Manjarrez were the owners of the mines which have been named over to him, who sold the mines and haciendas to the Americans in the year 1865; that when Messrs. Castillo and Manjarrez were working the mines, he was aware that they produced good profits.

3d. That what is contained in this interrogatory is true, and, furthermore, that the silver extracted by the American company was disposed of by themselves, that is to say, by Mr. Elde and others called D. Juan and D. Carlos, these having beneficiated the best ores.

4th. That all the points set forth in this interrogatory are true.

5th. That it is all true.

6th. That the contents of this interrogatory are also true.

7th. That he has seen that they took all the best things or appurtenances, from the hacienda, but does not know what disposition was made of them.

The examination was thereupon concluded, when it was read to him and acknowledged to be true as he had declared, and signed for him by me, the judge, as deponent was unable to write, together with the assistant witnesses.

(Signed,) GIL RUIZ.
" GUEVARA.
" ESTANISLAO CALDERON.

Deposition of Refugio Fonseca.

On the third of February, of the current year, personally appeared the witness, Refugio Fonseca, called to testify in this case, who, after being sworn accord-
135 ing to law to tell the truth, in regard to what might be interrogated, and as far as he might be informed, made answers as follows to the same questions that had been propounded to the preceding witness in this cause, viz: He answered to the—

1st. That his name is as above stated; is more than 55 years of age; married; a day-laborer by occupation, and a resident of Tayoltita.

2d. That he has been acquainted with the mineral district of Tayoltita since the year '55; that D. Juan Castillo de Valle and D. Ygnacio Manjarrez were the owners of several mines of that district, and that they afterwards sold out to the American company, in the year 1865; that said mines produced good profits to their former owners.

3d. That what is contained in this interrogatory is true, and that he knows besides, that the silver which the Americans took out was carried by them to Durango and Mazatlan.

4th. That the points set forth in this interrogatory are true.

5th. That everything in this interrogatory is positively true.

6th. That all that is stated in this interrogatory is true, so much so, that nobody is left in this mineral district of Tayoltita.

The proceedings in the matter of taking this deposition were then concluded, to which, after the same had been read over to him, he made acknowledgment, and signed the same with me, the present judge, and assistant witnesses.

(Signed) GIL RUIZ.
" REFUGIO FONSECA.
" A. GUEVARA.

Deposition of Ygnacio Manjarrez.

On the 19th of the present month and year, personally appeared the witness, Ygnacio Manjarrez, called to testify in this cause, who, after having been sworn to tell the truth, as to what might be inquired of him, and as far as he might be able, made answer to the same questions previously propounded to the preceding witness in this cause, Patricio Camacho, as follows, viz: He answered to the—

1st. That his name is as has been stated; is more than 49 years of age; unmarried; by occupation a miner, and a resident now of the city of Durango.

2d. That he has been acquainted with the mineral district of Tayoltita for fifteen years; that in the year 1854, he and his partner, D. Juan Castillo de Valle, became the owners of the first mentioned of the mines that have been named over to him, and that during all the time that said mines were worked by them they produced good profits up to the year 1865; that they sold the mines and haciendas to an American company called the "Abra."

3d. That all contained in this interrogatory is true, with the addition that the silver extracted by said company was disposed of by themselves, that is to say, by Mr. Elde D. Carlos Exall, D. Juan N. & D. N. N.; that these said Americans beneficiated the best of the ores, and, as he has said, made use of the silver, and that a large quantity of invaluable tepetate remains in the patio of the hacienda.

4th. That all the statements in this interrogatory are true.

5th. That he knows it to be true.

6th. That it is also true.

136 The proceedings in relation to the interrogatories referred to in the beginning of this examination having been concluded, the following is annexed thereto, in continuation:

7th. State whether it is true that D. Santiago Granger was offered five thousand dollars by two Americans, with which to buy witnesses to say that the Tayoltita enterprise had been abandoned on account of a strike or riot, (*motin*,) and that no one could be found who would testify to such statement?

Answered: That he has so heard it said, but does not recollect by whom.

Thereupon this examination was concluded, to which, after it had been read to him, he made acknowledgment, and signed with me, the judge, and the assistant witnesses.

(Signed) GIL RUIZ.
" YGNACIO MANJARREZ.
" A. GUEVARA.
" ESTANISLAO CALDERON.

Deposition of Santiago Granger.

SAN DIMAS, *August* 23d, 1871.

On the date next above written, personally appeared in this court, over which I hold jurisdiction, the English citizen, D. Santiago Granger, summoned as a witness to testify in this case, who, after being sworn to tell the truth in regard to what he might be questioned, and as far as he might be able, made answer to the interrogatories as follows, viz:

He answered to the—

1st. That his name is as has been stated; that he is 42 years of age; unmarried; a merchant; and resident of this mineral district.

2d. State whether you are familiar with the mineral district of Tayoltita, situated four leagues to the southwest of this center of jurisdiction, and forming a part thereof; how many years you have thus known the said place, and who, at that time, were

the owners of the Rosario, Luz, Cristo, Ynocentes, and Nuesta Sra de Guadalupe mines up to that in which they became the possessions of American companies, in the year 1865; what were the profits or losses that resulted to the former owners of said mines, and upon what terms they might have been acquired by the agents of the American company?

Answered. That he has been acquainted with the mineral district of Tayoltita for about five years; that according to the information which he possesses D. Juan Castillo de Valle and D. Ygnacio Manjarrez were the owners of the mines which have been named over to him before they came into the possession of the American companies; that he does not know what profits or losses may have resulted from said mines to Messrs. Castillo and Manjarrez, but that he knows something in regard to those of which the American company was the recipient.

On being asked to state whether he knew, and why he knew that the American company directed their principal attention to the working of the Rosario mine; whether they destroyed the *haciendas* for beneficiating ores, built at great expense by the anterior owners, and brought out costly machinery to put in their places; if the company went to work in the mine, and obtained, at great cost, an im-
137 mense number of *cargas* of worthless ore; if, on this account, and for the reason that the workmen would not consent to be paid wholly in goods, they suspended the working of the mines; if, at this juncture, the superintendent of the American company granted permission to D. Guadalupe Soto to take out all the ore he could, and that he, accordingly, did take out sixty *cargas*, which would not yield him enough to pay for its beneficiation; if said ore, besides being abandoned, remains still in the *haciendas* as they left it, on account of its being nothing but pure *tepetate* or worthless rock; if this superintendent, D. Santiago Granger, afterward sold everything saleable which remained in this *hacienda*?

He answered and said: That he is not aware that the company directed their attention principally to the working of the Rosario mine, but that he does know that this mine was worked more *than the others;* that with respect to the destruction of *haciendas* he knows nothing; that the machinery brought by the company remains in the *hacienda;* that as to the ores, it is true they still remain, and that, in his judgment, they are good for nothing; that in connection with what has been inquired of him concerning the operations, he knows nothing, nor does he know whether permission was given to D. Guadalupe Soto to take out any ores; that in regard to what he has sold, it is true that he did sell some things, with the object of furnishing himself with means.

Being interrogated as to whether it is public and notorious that the American company of the "Abra," as well as the other companies that have worked mines in this mineral district, have carried on their operations without having been troubled by any disturbances whatever, on the part of the populace or military, and whether American citizens are now working the Candalario and Bolaños mines without being interrupted by any one in their labors, and without having any reason to complain of said authorities, and whether, on the contrary, if they do not have all the protection that these authorities can give them, the same as any other enterprise under Mexican management?

He answered and said: That in regard to what is contained in this interrogatory, he knows that the principal civil authority, D. Marcos Mora, when he occupied that position in this district, molested the Abra Company by meddling with them in regard to the manner of working, which they had adopted, and that when D. Nicanor Perez was judge in Tayoltita, he arrested, without having any reason, the superintendent, Mr. Exall; that in 1865, according to a letter which he saw from the military commander, Jesus Valdespino, this person asked $1,200 from the Abra Company, but that he does not know whether the company paid it or not; that as far as the other authorities and people of the district are concerned, he is not aware of anything they ever did against the American companies.

Upon being asked whether he knows that American citizens in the district of San Dimas have not been looked on unfavorably, or that they have been persecuted or threatened with assassination, but whether, on the contrary, they have not been highly esteemed by the people of the country on account of their unselfishness in carrying forward the profitable enterprises that they are in the habit of undertaking among themselves?

He answered and said: That he knows the same to be true.

On being asked if he knew that Santiago Petillo shot Teodoso Soto at a ball, in San Dimas; he answered that he does know that he shot the said American.

On being questioned whether he knew what the American company did with
138 the Luz, Cristo, Ynocentes, and Guadalupe mines, he answered that they began some works in the Luz and Cristo mines, but does not know whether they did anything in the Ynocentes mine or not; that the Guadalupe mine belongs to another company; and that he is ignorant as to what has been done in it.

Thereupon the examination was concluded, when the declaration was read to him,

acknowledged to be the same that he had rendered, and to be the truth; to which he signed his name in ratification thereof, with me, the judge, and the assistant witnesses.

(Signed,) CIPRIANO QUIROZ DE LA V.
" SANTIAGO GRANGER.
" ESTANISLAO CALDERON.
" CAMILO CALDERON.

Deposition of Maria Cecilia Jimenez, called to testify in this case, who, after having been sworn to tell the truth in regard to what should be asked of her, as far as she might be able, made answer to the interrogatories, as follows:

1st. State your name, age, condition in life, and residence?

Answered: That her name is has been stated; is 32 years of age; is married; and a resident of this mineral district.

2d. State if it is true that two Americans offered D. Santiago Granger $5,000 with which to buy witnesses who would say that these operations in Tayoltita had been abandoned on account of a disturbance; and that no one could be found to give such testimony?

Answered: That what she knows is that an American, called General, and whose name is Alonzo W. Adams, who lately came in company with Mr. Dana, was the person who, solely of his own account, summoned some operatives who were living in Tayoltita, and who had been employed in his works, which operatives, having made their appearance, gave their testimony, the said general writing, and offered to pay them well for the loss of their time, whatever it might be. This was done without witnesses being present, or authority of any kind; that deponent afterward came to this mineral district, and, being in the hacienda of the Candalario Company, saw that the said general had quite an angry altercation with D. Santiago Granger, and an American named Rafael Martin, which arose on account that these gentlemen did not approve of the declarations that he had taken upon himself to receive on his own account, and besides, because, in their opinion they were false, it being inferred that the said general wished to take advantage of the ighorance of the deponents, who could neither read nor write; that the result of this altercation was that D. Rafael Martin drove the said general out of his hacienda, saying to him that he did not wish to run the risk of any compromise to the company or to Mexico that would be likely to arise from his unjust pretensions in taking it upon himself to alone receive the declarations of the said operatives.

With this the examination was concluded, to which, after it had been read to her, she made acknowledgement, and said that she had nothing to add thereto or take therefrom.

Signed for her, at her request, by José Antonio Cordova, with me, the judge, and the assistant witnesses.

(Signed,) CIPRIANO QUIROZ DE LA V.
" J. ANTONIO CORDOVA.

139 SAN DIMAS, *August 24th*, 1871.

These proceedings in reference to the Abra mine having now been concluded, make return of the same in 15 fojas utiles to the Supreme Government of the State.

(Signed,) CIPRIANO QUIROZ DE LA V.
" TIMOTIO SAINZ.

This is a copy.

(Signed,) JUAN DE DIOS ARIAS, *Chief Clerk.*

MEXICO, *November 8th*, 1872.

Examination in San Dimas of witnesses for the defense, on the 24th of September, 1871, before Cipriano de la V., Judge of the Court of First Instance, of the District of San Dimas.

Bartolo Rodriguez being duly sworn, deposes and says:

Question 1. State your name, age, occupation, and residence, and whether you are married or single?

Says that his name is as above stated; that he is forty-one years of age; is married; a miner by occupation, and a resident of this place.

2d. State if you know anything about the mining district of Tayoltita, and for how long, and to whom belonged the "Abra," the "Rosario," the "Luz," the "Cristo," the "Ynocentes," and "Nuestra Señora de Guadalupe" mines?

Says that he has been familiar with the mining town of Tayoltita a little more than eighteen years; that the mines above mentioned, with the exception of "La Abra," be-

longed to D. Juan Castello de Valle and D. Ygnacio Manjarrez; that afterwards these gentlemen sold mines to the Americans, who sold the "Guadalupe" mine and retained the "Abra," but does not know in what manner they obtained it.

3d. State whether you know if the "Abra" mine, together with the haciendas of "San Nicolas" and "Guadalupe," as also the "Arrayon" and "Talpa" mines belonged to another American company, with those of San Felipe and San Antonio?

Says that he does not know in regard to the San Bartolo mine, for he has never heard of it before, but that the others spoken of belonged, latterly, to the Americans.

In answer to the question as to the richness of the mines or about what they yielded of silver, he said they are very poor.

To the question as to whether all the said mines latterly belonging to the Americans, were capable of producing a million dollars in silver, annually, he answered, that not all the rock and metal they ever mined from them, even were it rich in silver, would not produce the exaggerated sum of a million dollars annually, much less the heap of worthless rock alluded to as being in the hacienda. He also said that not all the ore in the heart of the mountains would be sufficient to yield that amount, for the Americans who have come here are incapable of mining it, except at great expense, and they would be more likely to lose than gain in the experiment. Also that the Americans abandoned their enterprise simply because they wished to do so, as deponent is not aware that they were molested or driven to make such abandonment, either on account of any Mexican citizen or Mexican authority; that
140 instead of making improvements, the said Americans destroyed the hacienda which Castillo and Manjarrez had left in good repair; that the working of the mines was not conducted as it should have been, as is shown by the disorderly arrangement of the said pile of ore in the patio of the hacienda; that it is true the Americans had machinery, but that Mr. Granger and Mr. Klin, who were left in charge of the works, have sold a large lot of tools and other things, such as quicksilver, salt, &c., and some groceries or goods, all of which was sold very cheap, saying that they were obliged to do so to obtain the means to live as they had not been paid their wages; that at the last the said Granger ordered the iron window gratings, counter, and shelves to be taken out of the store at the hacienda in Tayoltita, and removed, together with other things to San Dimas, and that a part of those articles, as is publicly known, he had deposited in a house that he had bought; that in consequence of this demolition of the hacienda of Tayoltita, formerly belonging to Castillo, by the Americans, the town of Tayoltita has been almost entirely abandoned, for to those who would like to carry on mining it would not be profitable to remove their ores to San Dimas for beneficiation; that it is probably a fact that the machinery which the Americans left at the hacienda is incomplete, or rather that which they erected there.

In answer to the question whether he ever knew of any individuals, or Mexican authorities of the district of San Dimas, molesting or threatening to assassinate any of the Americans who have come to Tayoltita to engage in mining, he said that not only did nobody ever molest or interfere with them, but that, on the contrary, he knows that the authorities of this district have always protected them; and as for the people of the town, they have sought employment of the Americans at the mines, notwithstanding the fact that these have always looked down in scorn upon the Mexicans employed under them, imposed tasks upon them not allowed by law, and have refused to allow a Mexican miner the same pay for the same work as they did to American miners; that it is a well-known fact, that these Americans have paid to their servants and employees, wages that they did not deserve or earn, when such were of their own nationality, which is the cause of a part of the loss of which they complain.

In answer to the question if he knew about how much ore the American company left in the *patios* of the mines, its quality, and if they were robbed of it, and by whom, he said that they left a small lot of *tepetate* in the *patio* of the "Luz" mine, and a quantity of common rock in that of the "Cristo" mine; that he does not know how many *cargas* there may have been, but believes that it is still there; that he is not aware that the Americans have been robbed either of ore or of other things, and that the foregoing is all he knows in regard to the matter.

At the same time and place, and before the same judge, Refugio Fonseca was sworn, and deposed as follows:

In answer to the questions propounded to him, he said: That he is called as above stated, married, a miner by occupation, and a resident of this place; that he is informed in regard to mining operations in Tayoltita, and has been familiar with the mines there for seventeen years; that when he knew of the "Abra" mine, it had no
owner; that the "Rosario" belonged to the Messrs. Castillo & Manjarrez, the
141 "Luz" being comprehended with the "Rosario;" that the "Cristo" was de-

[illegible] by Castillo, the "Patricio" belonged to Patricio Camacho, and Nuestra Señora de Guadalupe to Juan Castillo also; that D. Juan Castillo afterwards sold the "Luz" and "Rosario" mines to the Americans, as also the "Cristo" in like manner, on account of its being connected with the others; that he also sold them the "Inocentes," by power of attorney from Camacho, and also transferred to them the "Guadalupe," as he owned a part of it, but did not sell it to them. To the question as to whether he knows that the "Abra," the haciendas of San Nicolas and Guadalupe, together with the Talpa and Arrayon mines, belonged to another American company at the same time as those of San Felipe, San Antonio, and San Bartolo. He said that in regard to the mines alluded to, the "Abra" was the only one that had no owner, until it became the property of this last company; that he does not know the San Bartolo mine, and that the haciendas belong to this company; that the mines referred to yield very poorly, and produce little ore, as is proven by the metal left in the patio of the hacienda; that if all the tepetate were taken out of the mines and beneficiated, it would not produce a million dollars annually; that the Americans abandoned their enterprise on their own account,, and not from any interference on the part of the authorities of Mexico; that he does not know how much ore there may be, ready for beneficiation in the said mines and haciendas, but believes there is some; that the said rock will not produce any silver, because it is pure *tepetate*, and therefore contains none; that only from the ore mined by the American, Carlos Mudo, was any silver ever extracted, because it was the best that the mines could produce; that the said American took the silver to Durango, and paid a gambling debt with it which he had contracted, and when he returned to Tayoltita he was obliged to sell some things in order to obtain the means to go to Mazatlan; that he has never heard that the Americans have been robbed of anything; that he does not know whether they were robbed of mules or not, and that the foregoing is all he knows in regard to the matter.

Deposition of Andres Serrano, taken at the same place, and before the same judge of the court of 1st instance, on the 25th of September, 1871.

After having been sworn he said: that his name is as above stated; is sixty years of age; married; miner by occupation; and a resident of this place; that he has been familiar with Tayoltita for several years, and that the mines spoken of to him, formerly belonged to D. Juan Castillo de Valle, and D. Ygnacio Manjarrez, and after to the Americans; that the haciendas of San Nicolas and Guadalupe, and also the Talpa, Arrayon, San Felipe, and San Antonio mines, he has understood, belong to the Americans, but that he does not know which the San Bartolo mine is; that these mines have produced very little ore, although the yield of silver in the ore has been regular; that these mines have been very unproductive of good ores, is proven by the fact of the same having been left unworked by the Americans, it being nothing more than pure tepetate; that if it were the case that the tepetates produced silver, notwithstanding all that may be said by these Americans, it would have been impossible to have realized a million dollars annually from them; that the Americans abandoned their mines for the reason that they would not pay, and not from any prejudicial interference on the part of the authorities in regard to their property; that they
142 erected some houses to live in, which on account of having been abandoned, have fallen in, and become dilapidated, as is also the case with the machinery left by them; that of the Americans who have had charge of the enterprise in question, *Carlos Mudo* was the only one who beneficiated some of the best ores, and that the silver he extracted therefrom, as witness has understood, he took to Durango, and gambled it away; that Santiago Granger sold all the groceries and tools he could, and at very low prices, and at the last pulled the buildings at the hacienda to pieces, by taking away the doors and iron window gratings, which he used in fixing up a house that he owned in San Dimas; that, in consequence of these acts, the mineral of Tayoltita has been completely abandoned; and that the foregoing is all he has to say.

The judge before whom the foregoing witness was examined, Cipriano Quiroz de la V., signed the name of deponent for him, he being unable to write, in the presence of the assistant witnesses.

Deposition of Benigno Galvan, taken on the same day and at the same place.

After having been sworn, deponent said: That his name is as above stated; married; of age; a miner by occupation, and a resident of this place; that he has been familiar with the mining town of Tayoltita for a long time; that he was aware that the mines which have been named over to him belonged to D. Juan Castillo, and D. Ygnacio Manjarrez, formerly, and that the same afterward became, as he saw, the

property of these Americans, but that he does not know in what manner they were transferred to them; that this company worked some of said mines, and others not, and that in his conception they did not know of their existence—or, rather, the location of them; that he knows that the haciendas of San Nicolas, Guadalupe, Talpa, Arrayon, San Felipe, and San Antonio belong to the company, and that he does not know which the San Bartolo mine is; that the said mines have never yielded large quantities of ore, and that what they have produced has never been rich, but only passably so, as is proven by the fact of the same having been left by the company on account that it would not pay, it being nearly all pure *tepetate;* that said mines could never yield a million dollars annually, for the reason before stated, to the Americans, as the kind of ore that they were in the habit of mining was worthless, as can be seen by that which they left; that the Mexican authorities were not the cause of the Americans abandoning their property, but that this abandonment was effected by the parties themselves, who were left in charge of the same; that the improvements made by said Americans, consisted in destroying the hacienda, formerly owned by Castillo and Manjarrez, in putting up the machinery brought by them, and in building some houses in which to live, and which are now in ruins on account of such abandonment; that, in addition to this, the Americans inaugurated the system of paying in *cartons*, or promissory paper, and that they also paid the Mexicans a very low rate of wages, as compared with that allowed to their American employees; that Santiago Granger sold tools, salt, quicksilver, &c., belonging to the company, at very low prices, alleging that they had not been paid their wages; that said Granger also ordered doors, counter, shelves, and iron window gratings to be removed to San Dimas, to fit up a store for himself; that he does not know what amount of ore was left by the Americans at the mines and haciendas, but that they left some *tepetate*, which is good for nothing; that it is a lie that these Americans abandoned their said mines by
143 reason of the interference of the authorities, and that the *real* reason was because they had no means with which to continue their workings; and that the foregoing is all he has to say.

The above was signed for deponent, as he could not write. (Signed) Cipriano Quiroz de la V., in the presence of the assistant witness

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Deposition of Petronilo Santos.

Following the above, the deposition of Petronilo Santos was taken, who, after having sworn, deposed and said:

That his name is as above stated; married; of age; miner by occupation, and a resident of this place; that, in answer to the question as to how long he has been familiar with the mineral of Tayoltita, and in whose hands he knew the Abra, Rosario, Luz, Cristo, Ynocentes, and Nuestra Señora de Guadalupe, he said, that he has known said mineral from twenty-three to twenty-four years; that he knew the mines above enumerated to have belonged to D. Juan Castillo and D. Ygnacio Manjarrez, with the exception of the Abra; that said mines subsequently became the property of Americans; that, as he is informed, they bought them; that, in answer to the question as to whether the haciendas of San Nicolas and Guadalupe, together with the Arrayon, Talpa, San Felipe, and San Antonio mines belonged to the company, he knows that the haciendas named did belong to the company, but that as to the mines named, he cannot say; that he does not know the San Bartolo mine; that the ore of said mines, assorted, has been rich, but that they never produced but very little in quantity; that according to what he has seen, it would be very *improbable* that the said mines would yield a *third part of the million dollars, which the Americans claim for them, annually;* that during the time he lived in Tayoltita he never saw or heard that the authorities had interfered with or molested these Americans, or that they abandoned their mines, haciendas, and other property on account of such interference; that these Americans *made no improvements on said property;* that he does not know why they abandoned their mines and haciendas, as he was not living in this place at the time they left; that it is not true that the authorities took possession of the machinery, goods, &c., of the company, but that, on the contrary, he knows that they themselves sold some of the things—such as clothes, or cloths, tools, and groceries; that not to his knowledge did the authorities ever threaten any one of said Americans with assassination; that he does not know what amount of ore they may have left in the mines and haciendas; that there is no ore in the mines which was left there by the Americans, but that there is a heap of *tepetate*, which was left in the hacienda, for ore it cannot be called; and that he knows of nothing more in connection with the matter.

Signed for deponent, as he could not write, by the Judge Cipriano Quiroz de la V., in the presence of the assistant witnesses.

Deposition of Bernadino Aguirre, taken in San Dimas, September 26th, 1871, who, after having been sworn, deposed and said:

That his name is as above stated; of age; a miner by occupation, and a resident of this place; that the mines spoken of belonged to the company; that they did not work the Abra mine in a regular or scientific manner; that the ore was left
144 in the hacienda because it was too poor to pay for beneficiating it, and not on account of any interference on the part of the authorities or inhabitants of the district; that, on the contrary, the company had all the protection they desired during the war of resistance to the so-called empire; that they had no mules on their works, since on various occasions they were obliged to travel on foot, or hire mules, in order to make their journeys to and from Durango and Mazatlan; that they beneficiated the best of the ore they mined, and made use of the silver extracted therefrom; that they have never been robbed by the Mexicans, as they allege to have been; that of the ore they mined a part still remains in the patio of the hacienda; that the machinery is still in the same place where they erected it; that they themselves disposed of a quantity of their effects, such as salt, quicksilver, and tools; that Granger sold them, and carried away the doors and window gratings; that they made no improvements, and that as to a million dollars annually, the said mines could never produce that amount, as they are not productive of large quantities of ore, although it may be of ordinary or payable richness; that this applies to ores, and not to tepetate, which latter is what the company left, and which may still be seen where they deposited it, and that he has nothing more to say.

Signed for deponent by the judge, on account of not being able to write. (Signed) Cipriano Quiroz de la V., in the presence of assistant witnesses.

Deposition of Leandro Molina, taken on the same day, who, after being sworn, deposed and said:

That his name is as above stated; is 27 years old; unmarried, and a resident of this mining district, and a miner by occupation; that he has been familiar with several mines in Tayoltita, for several years, but cannot say to whom they belong; that the haciendas of San Nicolas and Guadalupe, and also the mines of San Felipe and San Antonio, belong to the American company, but that he has never heard of the San Partolo mine until to-day; that the mines with which he is acquainted are those which have been worked; that in these the ore is not very abundant, although its quality is middling; that the veins are very narrow; that is to say, the part of them which produces ore, and not with the tepetates, an abundance of which may be mined from any of the mountains; that these gentlemen could never have extracted a million of dollars annually; that no silver was ever produced from the tepetates; that the company abandoned the ore which they had mined because it would not pay for beneficiation, and not on account of any interference on the part of the Mexican authorities; that the machinery is still in existence where they left it; that he never knew of the company having any mules, but knows that when they went to Durango, or Mazatlan, they had to hire mules; that they have not the slightest cause to complain of having been injured by the Mexicans; that it is true they brought some provisions and other things with them, but that the greater part of such things were sold by they themselves, that is to say, salt, quicksilver, tools, &c.; that these gentlemen have never been molested in the country, but have enjoyed all the protection they desired from the authorities, for when the war with the French was going on, no Mexican had a safe passport to go and come, while these Americans did have such pass, both to Mazatlan and Durango; that finally, Santiago Granger, the superintendent of the Abra company, sold several things, and destroyed, in addition, the buildings constituting the hacienda, by taking away the doors and iron gratings, which he removed to a house he had bought in San Dimas; that the amount
145 claimed by these gentlemen is unjust, for the superintendents whom they have over their works have not been capable to have charge of haciendas and mines; and that the above is all he knows about the matter.

Signed in the presence of the judge and assistant witnesses.

(Signed,) CIPRIANO QUIROZ DE LA V., *Judge.*

Deposition of Pio Quinto Nuñez, taken at San Dimas, on the 26th of September, 1871, before Cipriano Quiroz de la V., Judge of 1st instance.

Being duly sworn, the deponent said: That his name is as above stated; of age; a widower; a miner by occupation, and a resident of this place; that the mines, before alluded to, are the property of the company, they having acquired them by purchase,

or transfer, from Castillo and Manjarrez; that said mines have never produced great quantities of ore; on the contrary, very little, although it is ordinarily rich in silver, but not extraordinarily so, as these claimants allege; that it is true, that some Americans came to work the said mines, but that no one of them understood such business; that the engineers who came with the machinery put up the same, and that it still exists in the same place; that this company did not buy any mules during the time they carried on their mining operations, but paid the hire of those they had in use; that he cannot say whether they spent as much money as they say they did, in buying said property and carrying on their mining business; that it is incredible that they could have taken out, as they claim, a million dollars annually in silver, because the ores which they mined were of no account whatever, and which are to be found still in the same place where they left them; that it is not true that these Americans abandoned their enterprise on account of the acts of Mexican officials, and that it is equally false that either the civil or military authorities, or the inhabitants of the district, made any prejudicial opposition to them, as they have alleged they did; that the deponent has never seen or heard it said, that any superintendent was imprisoned, and much less does he believe that such superintendent complained to the civil or military authorities in Durango and Sinaloa, and was denied the protection thus solicited; that he has never known that the authorities have countenanced acts of violence against the interests and employees of the company; that it is false that the authorities, as the company allege, took possession of their mules and provisions, and appropriated the same to their own use; that the company never had any ore taken from them, as they affirm, since that which they took out of their mines still exists, as before stated; nor have their employees ever been threatened by any Mexican with intention to rob them; that the company has no reason to complain, in any way, against Mexico, because they did not abandon their operations on account of the Mexicans, but because they themselves did not understand how to carry on the working of the mines, as is proven by the unproductive manner in which they worked; that this is the cause of their abandonment, and not, as they say, from any want of security; that the reparation, which the company claims of Mexico, is not founded in justice, because the allegations upon which it is based are false; that what the company did in Tayoltita, was to put up some machinery and houses, the most of which have fallen down and become dilapidated from having been abandoned; and that as to the machinery, it still exists; that under no circumstances, could the above-named
146 appurtenances have been worth the sum claimed by the company to have been spent in their erection; that as to the statement of the company, that they could have produced a million dollars annually from their mines, it is not true, for they could not take out that amount of silver in five years, much less in one; that neither the mines, nor the machinery of the company, are ruined or lost, because they are still in existence, and that he has nothing more to say.

(Signed.) By the judge, Cipriano Quiroz de la V., deponent not being able to write, in the presence of the assistant witnesses.

Deposition of Julian Romero, taken on the same day, and in the same place, who, after having been sworn, deposed and said:

That his name is as above stated; of age; married; a pack-mule driver by occupation, and a resident of this place; that in regard to the mines made mention of in the claim of the Abra Mining Company, he knows that this company bought the same, or that they were transferred to them by Dn. Juan Castillo de Valle and Dn. Ygnacio Manjarrez; that these mines have always yielded a small quantity of ore, although its quality has been ordinary, but not extraordinary, as claimants allege; that when the company commenced to work the said mines, some Americans came to work, but of these none understood their business as miners; that mechanics also came and put up the machinery, which still exists; that during all the time the deponent was in Tayoltita he never knew that the said company bought any mules to use in their works; that he does not know whether the statement of the claimants be true or not in regard to the sum which they claim to have spent in the purchase and working of their mines; that he could not judge whether the company took out a million dollars a year from their mines or not, but that he does know that the rock which they took out, and which still exists where they left it, was nothing but *tepetate;* that it is not true that the company abandoned their business on account of the unlawful acts of Mexican officials, as they allege they did; that the civil and military authorities have never had a disposition to oppose the Americans as stated by claimants; that he has never heard it said that any superintendent was imprisoned, and much less that the authorities of Durango and Sinaloa denied him the protection he asked for; that he never knew that the authorities took any lot of mules and provisions, and applied them to their own use; that the company has had none taken from them as they af-

firm, since that of all they took out all is still in existence, nor have their employees ever been threatened by any Mexican; that the company have no cause to complain that it was on account of the Mexicans that they abandoned their operations, but rather that it was for the reason that those whom they sent to take charge of their business were incompetent to do so; that the damages and injuries claimed by this company against Mexico are very illegal; that the works erected by this company in Tayoltita consisted in putting up machinery, and some rustic dwellings, and which were not well built, and have all fallen down, while the machinery still remains; that with reference to the product of a million dollars annually, as the company claim their mines would have yielded, it is impossible to believe that such would have been the case by working them for a longer time, much less for a year; that the mines and machinery which the company say are ruined, are still in existence in Tayoltita; that the only building that is destroyed is that outside, which after its abandonment, was ruined by the rains, and D. Santiago Granger, the last person who had charge of the works, took away the doors and iron window gratings, and sold some of the effects and tools, for which the company cannot complain of the Mexicans, but rather of their own employees whom they have had in charge of their business, and that the above is the truth and all he has to say.

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Signed for him by the judge. Cipriano Quiroz de la V., [the deponent not being able to write,] with the assistant witnesses.

Deposition of the English citizen, Santiago Granger, superintendent of the Abra Mining Company, in Tayoltita, taken in San Dimas, October 6th, 1871, before Cipriano Quiroz de la V., judge of the court of 1st instance, in said place.

After being sworn, the deponent answered and said: That his name is as above stated; of age; unmarried; a native of England, and resident of this place; that the mines alluded to in this claim belong to this company, but that during the time that he was in charge of the works he did not see their names; that all these mines, as well as the haciendas, were known under the name of the Abra Enterprise, or Works; that formerly these mines were much talked about, but that they now are good for nothing; that in regard to the company having owned many mules, that one year before, when deponent had charge of the business, he can only say that the company had about fifteen mules, that he saw, more or less; that he supposes it to be true that the company has spent $303,000 in the purchase of their mines and machinery, and in working the same; that the greater part of the ore taken out by the company is still in the patio of the hacienda, and that it is good for nothing; that *some* of the ore was good, but that this was beneficiated; that he is not aware that the company abandoned their works on account of the illegal acts of the Mexican authorities; that he does not know that the civil and military authorities, or the inhabitants of the town, had any ill feeling against the Americans because they believed the latter to be working the mines, thinking that the United States Government would take possession of the States of Durango and Sinaloa; that he knows the superintendent to have been imprisoned and fined, without informing him of the crime for which he was held, and without giving him a trial; that he, the superintendent, did not wish people to enter the warehouses (*bodegas*) of the company without permission from him, was the cause of the imprisonment of said superintendent, the judge having entered them before, and afterwards the said judge ordered the superintendent to be called, when he imprisoned him in a small house, at a place called the "Raventon," situated in the same district of Tayoltita; that, in answer to the question as to whether he knows that the superintendent asked protection or not from the civil and military authorities of Durango and Sinaloa, and that these denied it to him, he said that he is aware that he presented himself before the civil authorities of Durango, but does not know what answer he might have received; that he does not know what acts of violence were committed against the employees of the company, or against their interests; that in answer to the question as to whether he knows that the Mexicans took some lots of mules loaded with provisions, and appropriated the same to their own use, he responded that he heard it said that during the revolution between the French and Mexicans, some mules, loaded, had been lost, but that this was before deponent came to Tayoltita; that in answer to the question as to whether he knows that the Mexicans threatened the Americans who watched over the company's ore, because they would not let them steal it, he said that he knows nothing; that in answer to the question whether or not the mines and buildings erected by the company were likely to have cost a million dollars, he said that they probably cost $303,000, counting all the labor expended on them, as they themselves say in their memorial; that in answer to the question as to whether the mines, haciendas, machinery and

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buildings, are still in good condition, he answered that the mines remain in the same state that they were left by the company, that the haciendas and machinery are suffering for the want of being looked after, and that the buildings are injured for the lack of the parts of them which the deponent removed, as stated in the accompanying document; that in answer to the question as to whether this enterprise had produced a million dollars annually, he said it did not yield a profit of a *cuartilla*, (about three cents;) that, on the contrary, it was a losing operation; that in answer to the questions as to whether the company had lost their mines, improvements, and machinery, he said that he has already stated the condition in which they now exist; that what he has said is the truth. (Signed) Cipriano Quiroz de la V., and the assistant witnesses.

Deposition of N. A. Sloan, taken in San Dimas, on the 9th of October, 1871, before the judge of first instance, Cipriano Quiroz de la V.

The witness, after having been sworn, deposed and said:

That his name is as before stated; of age; a native of the United States; and a resident of this mining district; that in answer to the question as to whether he knows anything about the mines known as the Abra Enterprise, or works, he said that the mines and haciendas that have been named over to him belong to this company; that in response to the interrogatory as to whether the company brought out miners, mechanics, and brought large numbers of mules and loaded them with provisions, and whether the machinery was of the best class, he answered:

That it is true that they brought with them mechanics, and set up machinery, but that he only saw from ten to twelve mules, and that the machinery was good, but not of the best class; that in response to the question, as to whether this company spent, in the purchase and working of their property, the sum of $303,000, and whether, from the result of this expenditure, they were taking out a million dollars annually profit, he answered, that at the time he was a clerk for the company, he saw, according to the statement of the superintendent, that they had expended $303,000, and had taken out a little less than $6,000, in silver; that in answer to the question as to whether the company had been the subjects of any ill-feeling from the civil and military authorities, or the people of the district, he said that he did not know that such had been the case; that he does not know that the American employees were ever threatened by the Mexicans; that in answer to the question as to whether he knew that the superintendent had been imprisoned without knowing for what, he said that he knew he had been a prisoner in the jail, and that he understood that his imprisonment was because, or, rather, according to what he saw of the affair, it was because the judge went into the hacienda to speak to one of the peons who was at
149 work there, and the superintendent thereupon put him out, from which it resulted that the said judge immediately went to his house and ordered the superintendent to be called before him, when he sent him to prison; that he is not aware that the authorities took possession of the lots of provisions; that he is likewise not aware that they took a large amount of ore from the company; that in answer to the question as to whether he knew that the liberal forces killed one of this company's superintendents and embargoed the works over which he had charge, he said, that he is aware that they killed one of the employees, but that it happened in the State of Sinaloa, and that he does not know who it was; that the company erected a building in the suburbs, but that this is falling into decay: that in answer to the question as to whether he knows that this company was taking out a million dollars a year, he said that he did not; that he knows the company to have ore on hand, and that although he cannot state with any very great degree of certainty how much it might have been, he would judge the amount to be about five hundred cargas; that in answer as to whether he knew where this ore is and how much it would pay, he said, that it is in the *patio* of the hacienda, and that it will pay about five dollars per ton; that *there is no ore in the mines belonging to this company;* that the machinery is still in existence, but that it has been some time since he has seen the buildings and machinery, but has been told that they are in a dilapidated condition; that D. Santiago Granger took away the doors and iron gratings, but that he did not see him do it, and that the foregoing is the truth.

Signed with the Judge. (Signed) Cipriano Quiroz de la V., and the assistant witnesses.

Deposition of Ygnacio Manjarrez, taken on the same day, and before the aforesaid judge, and at same place.

After being sworn, deponent answered and said: That his name is as above stated; of lawful age; unmarried; a miner by occupation, and a resident of this place; that the mines and haciendas, mentioned in claimants' memorial, were known under

the name of "La Abra Mines," and belonged to this company; that said mines may have been rich formerly, but not in hands of this company, because their workings did not show such to be the fact; that it is true that the mechanics spoken of came and erected the machinery, and were paid high wages; so much so, that when money came from Mazatlan to pay off, they took it all; that the deponent never saw but twenty-odd mules, and these were pack and saddle mules; that as the enterprise failed, the machinery was abandoned, and still remains so; but that he cannot say whether it was of the best kind or not; that in regard to the amount which they may have spent in making the purchase, and working the aforesaid property, he cannot say anything, because he does not know; that the ores they took out they beneficiated the best of it, and the remainder is still in the *patio* of the hacienda, for which reason it is false that they produced a million dollars annually; that the Americans abandoned their works, because they could not make them produce silver, and not because the Mexicans run them off, for they enjoyed all necessary security, in a higher degree than the Mexicans themselves; that in regard to the hostility which the claimants allege was manifested by the Mexicans toward them, it is false, and I repeat that they left on account of the business in which they had engaged; that during all the time the deponent was informed as to the enterprise of the Americans, he did not see
150 that they were molested by the authorities, and much less by the people of the town; that during the period the deponent was in Tayoltita, he did not see that they confined any superintendent in prison; that as to what the claimants say about the authorities taking possession of the lots of mules, loaded with provisions, and appropriating them to their own use, it is false, since this was never seen during the whole time this company was working; that as regards what they say about the killing of one of the superintendents of the company, and the embargo of all he had under his charge, it is likewise false, as is also all that they say, nothing but a pure falsehood; but as to what the claimants allege in their memorial, it is wholly a lie, since the only enemy they had in Mexico is found in that they could not succeed in getting silver out of the *tepetates*, which this company took out of the mines; that the mines, haciendas, and machinery, which the claimants say are ruined, are not so, inasmuch as all of said property is to be found where they left it, and that the suburban building that they erected has been destroyed by the last superintendent who remained in charge, viz: D. Santiago Granger—he having taken therefrom the doors, iron window gratings, and other things, and brought them to San Dimas; that as to the ores, he has already stated that they still remain in the patio of the hacienda, and that nobody will take them even at gift, they being of the kind called "michi," which will not pay to beneficiate, and that this is all he has to say.

Signed before the aforesaid judge, Cipriano Quiroz de la V., with the assistant witness.

Letter of Santiago Granger to the Judge of First Instance at San Dimas.

I, Santiago Granger, a native of England, and a resident of this place, present myself before you and say, that I have disposed of the articles hereinafter specified, property of the Abra Mining Company, in the district of Tayoltita, in order that you may be pleased to appoint assessors to place a valuation upon them, so that at any time when the company shall call on me, I may be able to deduct the amount of their value from what said company owe me. They are as follows: 1 counter for store, 1 range of shelves, 3 large doors, 5 arrobas of iron.

(Signed,) SANTIAGO GRANGER.

SAN DIMAS, *June 4th*, 1871.

Court of First Instance, San Dimas, October 11th, 1871.

These proceedings being now concluded, make return of the same to the supreme government of the State, for the purposes they may serve.

I, the present judge, so ordered, commanded, and signed with the assistant witnesses, in accordance with law.

(Signed,) CIPRIANO QUIROZ DE LA V.
" PAZ GURROLA.
" ISIDORO MENDEZ.

151 EXHIBIT No. 1. [1872.]

[Translation.]

[American section.] Prosecuting Attorney's office of the circuit court of Durango.

In a supreme order addressed to this office, under date of the 16th of last April, by the Secretary of State and of Foreign Relations, it is directed that proceedings be instituted by the tribunal of first instance, tending to the elucidation of important facts concerning certain claims preferred before the Supreme Government.

On the 23d day of the month of August of last year, Cecilia Jimenez made a deposition before that tribunal, stating that an American general, called Alonzo W. Adams, who lately went in company with one Mr. Dana, was the person who, by himself, called upon some laborers residing at Tayoltita, who were engaged at their work, and that said general obtained depositions from them, promising to remunerate them well for their loss of time; and that this took place without any witness or authorization whatever; that the said Cecilia Jimenez subsequently came to San Dimas, and that, being at the Candalario Company's reducing works, she knew, and was present when the aforesaid general had a very warm altercation with James Granger, and an American called Raphael Martin, because they did not think it right that said general should take depositions by himself; and that, besides, they considered such depositions false, believing that said general had sought to impose upon some of the deponents who could neither read nor write; that in consequence of these differences, Martin ran the general out of the establishment, and told the general that he did not desire to compromise either the company or Mexico, as difficulties would arise on account of the false pretensions, founded upon the depositions taken by the general, aforesaid, from the laborers.

Thus, then, you will be pleased to extend the inquiry, ascertaining first, whether in fact the foreigners, Adams and Dana, were in San Dimas; secondly, whether both, or only one of them sought to obtain the aforesaid depositions from the laborers; thirdly, who were those laborers, as the aforesaid Cecilia Jimenez will be able to tell their names and surnames, and to give the necessary data, in order that the tribunal may cause them to appear to testify; fourthly, on the appearance of some of the laborers, they shall be made to state what took place with those foreigners, whether these laborers came there of their own accord, to make certain statements of facts to them, and what those statements were; and finally, whether they can read and write; fifthly, the aforesaid Granger and Martin shall be examined, especially the latter, in regard to what Cecilia Jimenez asserts to have witnessed.

Inasmuch as in the depositions already made before that tribunal by Granger, it appears that one James Potiller killed one James Soto with a pistol shot, you will extend the investigation, in order to ascertain who was this Potiller, and whether the fact of the shooting has anything to do with the claims of the company; whether Potiller was a member of said company, or had any connection with the mining establishment; and, finally, whether he was arrested for that shooting; whether he was put upon trial, and what was the final result of the same?

In the identical inquiry instituted before you, Granger and A. Sloan stated that the superintendent of the company had been imprisoned by the judge of
152 Tayoltita, and it will be necessary for you to extend the investigation, in order to ascertain the name of that superintendent; how long he remained a prisoner; who was the magistrate that caused the arrest, and what was the result of the appeals which the complainant may have addressed to the superior authorities of the State?

You will also endeavor to ascertain if the mining company of the Abra had any mules; if these or any of them were taken away by the authorities of the district, or if such authorities imposed any other burden, or subjected them to any exaction or violence of any kind; and as soon as you shall have completed these proceedings, which, I trust, will be done with the least possible delay, I beg that you will send me the original papers, in order that I may communicate the contents to the Minister of Relations, to which effect you may consult me as to any doubts or difficulties which may present themselves, with a view to their immediate solution.

Independence and liberty.

Durango, May 16th, 1872.

(Signed) JOSE M. HERNANDEZ.

To the Judge of the first instance of the district of San Dimas. Office of the Prosecuting Attorney of the Circuit Court of Durango.

Under date of the 14th of May I addressed myself to you, requesting that you would institute proceedings in conformity with the orders of the Minister of Relations, regarding some points concerning which I gave you the fullest instructions, and two months have nearly elapsed without my having received the proceedings from that tribunal; it is, therefore, indispensable that you will be pleased to notify me immediately, as to the condition in which this matter stands, and, if already concluded, that you will forward the documents in the case to me at once, in order that I may give an account of the same to the Ministry.

I now address myself again to that tribunal, in consequence of new supreme orders received by the last mail, directing that other measures may be adopted, necessary to prepare the defense of the Republic against the claims which have been preferred by the Abra Mining Company. So that you will be pleased, at once, and without delay, to obtain the following information:

1stly. Anastasio Milan will state, with all formality, whether it is true that, being judge of San Dimas, General Adams, and other foreigners who accompanied him, ap-

plied to him, Judge Milan, asking him to receive the depositions of such witnesses as might present themselves, to testify to the facts upon which the Abra Mining Company base their claim. If it is true that he declined to receive those depositions, let him state the cause or motive of such refusal, and relate all that took place on those occasions, in elucidation of the truth, as to the facts upon which it is pretended to base the claim.

If there were any witnesses formally summoned, or accidentally in attendance, who saw all that took place between Judge Milan and Adams, they will also be examined about the same facts.

2dly. How this refusal on the part of Judge Milan, to receive the depositions he had been requested to take, led to the extra-judicial examination of certain witnesses, among others, of Juan Francisco Gamboa, José Ma. Loaiza, and Matias Avalos. It is of importance that you should cause those persons to be summoned, in order
153 that each of them may testify, in due form, in what place, and by whom they were extra-judicially examined upon the matter of that refusal, as well as to other facts upon which the Abra Mining Company base their claim. They must state upon what terms they made their depositions, and whether they received any sum of money, or any other compensation for making the same. You will also ask them, if they were in Mazatlan in the month of May, 1870. If they appeared or were taken before the consul of the United States at that port, let them state for what purpose; what were the questions put to them, and what were their replies. Upon this point you will examine, in all due form, James Granger. And if you can ascertain that other persons have left the place to go to Mazatlan in the month of May, 1870, and that they have appeared before the consul of the United States, it will be proper for you to examine those persons also.

3dly. The principal facts which have given rise to these claims are, that the people, as well as the authorities, made hostile demonstrations against the company, and that said authorities required the works to be carried on according as they thought proper to direct; that they had convoked the people and the laborers, requesting the latter not to work on account of the company, and promising them to turn the mines over to them, to be worked by them for their own benefit. So that you will endeavor to examine some respectable residents, in order that they may state whether, in fact, the people and the laborers ever entertained any such purpose; whether the authorities actually did forbid the laborers to work on account of the company, and if it be true that Aquilino Calderon was driven from the mine of Del Cristo in consequence. The witnesses will moreover be made to state what motive the authorities had for making such prohibition.

It is of great importance that C. Marcos Mora, who was the judicial authority of that district, and Guadalupe Soto, who was judge at Tayoltita, be examined, in order that they may state whether they have dictated, and issued the communications, a copy of which accompanies this; it will be necessary for you to examine some of the residents, to ascertain if it be true that, in those years the mines called the "Abra mines" were attacked by the people, and what measures were adopted by the authorities for the suppression of those disorders.

4thly. It is also important that you should find in the archives of that tribunal, the data of a lawsuit, between Guadalupe Soto and the company, arising out of the appropriation, on the part of Soto, of one of the Abra mines, which suit the magistrate of Tayoltita would take no cognizance of, and which, it is said, was decided by the authorities of Durango in favor of the company; if you can find the data of this litigation, you may procure for me, evidence of the final disposition of the case, and send it to me with the other documents; if the suit has not been adjudicated, then you will draw up a certificate, setting forth the condition in which the matter stands.

You will endeavor to ascertain from the residents, or laborers, if they know whether Soto had been taking away any silver ore from any of the mines of the Abra; how many loads had been taken; what was the quality of the ore; by whose permission or authority Soto had taken away said ore, and if a permission to this effect had been granted to any of the employees of the company. These same questions will be put to Soto, requiring him to state whether said permission was verbal or in writing, and if in writing, to show the document to you; said Soto will moreover be required to state whatever he may deem proper upon this point.

154 5thly. You will also endeavor to find out from some of the most respectable residents, if they know the cause of the imprisonment of the American, Alfred A. Green, by the order of D. Camilo Perez, and why he was expelled from the mines of San Luis.

6thly. You will inform yourself, officially, at the bureau of the chief of the district, whether among those archives there is any evidence that in the month of July, 1866, by agreement with, or by direction of the civil authority then existing, the commandant, Dn. Jesus Valdespino, imposed a loan of $1,200 upon the company of the Abra; if this loan was covered in; if the whole, or part of the amount, has been returned; and if Valdespino was authorized to impose the same.

7thly. It is said that in a place called the Toro, in the State of Sinaloa, and not far distant from San Dimas, a certain individual named Grove, an employee of the mining company, was killed. You will be pleased, therefore, to address a letter of instruction to the judge of that place, called Toro, in order that he may take the testimony of witnesses, stating who attacked and killed Grove; if they had any military character, and to which forces they belonged; whether any mules, or effects were taken from him; and if measures were taken by any judge for the punishment of the culprits.

This same investigation will also serve to throw light upon the circumstances attending the attack upon another member of the company, named Scott, or Scottie, at a place also located in the vicinity of the mines, and who was driving a pack of mules loaded with provisions for the company.

8thly. It is alleged that Mr. Exall, superintendent of this company, was imprisoned at the mines; you will be pleased to find out if, in that tribunal, or in the bureau of the supreme civil authority, there is any notice, or record of such arrest, and of the reasons which caused it.

The minister of relations has ordered that this information shall be procured with the greatest despatch; as, also, with regard to the other proceedings; therefore, I entreat you, on my part, that not a day may be lost in carrying out the same; and, also, that you will consult me in regard to any doubt or difficulties which may present themselves; and, finally, that on the whole being concluded, you will forward the same to me at once, to which effect the tribunal of justice of the State has communicated the instructions which I have entrusted to you by supreme order.

Independence and liberty.

DURANGO, *July* 8, 1872.

(Signed) JOSE MA. HERRANDEZ.

To the judge of the first instance of the district of San Dimas.

[The following is the copy of orders to the company by the Gefe and Judge Mora, and Soto, referred to in the above instructions:]

Fiscal Department of the Circuit Court of Durango. Political Bureau of the District of San Dimas. This gefatura having been informed that you have suspended work at the mines, I tell you that this is not the engagement you have entered into with me; therefore I think that you do not value your word in anything; nevertheless, if you do not desire to work yourselves, give permission to the people that they may work the mines, because I am not responsible for the evil consequences which may result from a people without work. Independence and reform.

SAN DIMAS, *July* 10, 1867.

(Signed) MCS. MORA.

To the representatives of the mines at Tayoltita.

2d Conciliating Court of Tayoltita. This court has been informed, to its great displeasure, that you have not deigned to reply to a communication which was addressed to you twenty-four hours since. I therefore notify you, to come to terms with the operatives about the work, within two hours, and if no agreement is made by them, that you vacate the mines, in order that they may lose no more time. Liberty and reform.

TAYOLTITA, *July* 5*th*, 1867.

(Signed) GUADALUPE SOTO.

To the Superintendent of the Abra Mining Company, present.

2d Conciliating Court of Tayoltita. In consequence of the official communication of yesterday, the 3d inst., received from the gefe politico of San Dimas, I notify you, that if you do not intend to continue working the Abra mines upon the system of "thirds," as formerly, that you forthwith vacate the mines, and allow the operatives to work them for their own account, and that they may lose no more time. Liberty and reform.

TAYOLTITA, *July* 4, 1867.

(Signed) GUADALUPE SOTO.

To the Superintendent of the Abra Reducing Works.

Gefatura Politico of the Department of San Dimas. This gefatura has learned, with great displeasure, by your official communication, of the abuses being committed by those Americans, who, after at first having agreed to pay the operatives all in cash, afterwards promised to pay half and half, and a third time to pay them one-third. You will notify them, through your court, and by my order, that at least they shall carry out their last contract; that is, that they shall pay them one-third in cash, and if not, that they give up the mines to the operatives, to be worked by them as

best they may, since the mining ordinances do not provide that they shall be paid in goods alone, nor will the Government allow such abuses, and I am tired of receiving thousands of complaints upon the same subject. You will furnish the American, at the head of the company in this town, with a copy of this communication. Independence and reform.

SAN DIMAS, *June* 3*d*, 1867.

(Signed) M. MORA.

To GUADALUPE SOTO, *Judge Conciliador of Tayoltita.*

The foregoing is a copy. (Signed) HERNANDEZ.

SAN DIMAS, *July* 15, 1872.

Received the foregoing communication, with the accompanying copy of that of the Fiscal Department of the State, under date of the 8th instant. Let the proper acknowledgment be made of the communication to which it refers, of the 14th of last May. Let the measures requested be adopted. The first conciliatory judge of first instance, Cipriano Quiroz, of the O. of this district. It is thus provided, or-
156 dered, and signed by those of the associated bench. Cipriano Quiroz, of the O., (one signature;) A. E. Padilla, (one signature;) A. H. Rodriguez, (one signature.)

On the same day was cited and personally appeared Doña Cecilia Jimenez, whom I protest to know, and being of age, she was sworn to tell the truth, and before this she was made acquainted with the points contained in her declaration; which appear in the second paragraph of the foregoing official communication of the fiscal department of the State, under date of the 14th of last May, and being fully cognizant of the contents, she said that what was stated therein was correct, and that she corroborated the same. Being asked who the workmen were from whom the Americans, Adams and Dana, received depositions on the subject, in reference to injuries sustained in the negotiations of Tayoltita, she replied that she knew of that transaction, but that she did not remember the workmen; that Dionisio Gutierrez may know the names of the parties, because Mr. Adams was once in his house; that this is all she can say with truth. This deposition having been read to her, she reasserted and corroborated the same. Signed with me and the attesting witnesses. Cipriano Quiroz, of the O., (one signature;) A. H. Rodriguez, (one signature;) A. Simon Coronado, (one signature.)

Proceedings in continuation.—This is to show that, upon the foregoing deposition being presented to Doña Cecilia Jimenez to sign, she stated her inability to do so. I note this fact, with attesting witnesses. Cipriano Quiroz, (one signature;) A. E. Padilla, (one signature;) A. Simon Coronado, (one signature.)

On the same date, inquiries having been made for the parties referred to in the foregoing record, Messrs. Santiago Granger, Rafael Martin, Americans, Anastasia Milan, Juan Francisco Gamboa, José M. Loaiza, Matias Avalos, M. Mora, and Guadalupe Soto, whose depositions are to be taken, and in order to examine such other witnesses as may be referred to by these deponents, it is placed on record that Martin is at San Francisco, California; Gamboa and Loaiza in the district of San Ygnacio, State of Sinaloa; Soto and Granger in the mining regions of San Vicente, in the same district; and as to Mora and Avalos, their place of residence is not known; consequently it was ordered that the investigation, in regard to the latter, should be continued, and requisitions will be served, one on the tribunal of the first instance of San Ygnacio, enclosing all the papers relating to the depositions to be taken from all that may be found within said jurisdiction, and another in the shape of an order to San Vicente, in order that the magistrate of that place, who resides in that vicinity, may take measures to cause the appearance at the place under my charge of the abovementioned Soto and Granger, causing to be issued, in the meanwhile, the other citations concerning the investigations that are to be made. Let these proceedings be communicated to the attorney of the Government, and to the Supreme Tribunal of Justice of the State, for their information and final decision. The conciliatory tribunal, and that of the first instance, who sign this, thus decided, ordered, and signed before the attesting witnesses. Quiroz, of the O., (one signature;) A. E. Padilla, (one signature;) A. José Maria Martinez, (one signature.)

SAN DIMAS, *July* 16, 1872.

In consequence of the deposition of Doña Cecilia Jimenez, a summons was sent to D. Dionisio Gutierrez, but he could not be found in this place in consequence of his
157 being absent; it is also recorded that a reply was sent to the fiscal department, in reply to the note received; and the papers in the foregoing proceedings were enclosed separately. The requisitions mentioned in them were also issued. I record the same for evidence, before my attesting witnesses. (Signed) Quiros, of the O., A. E. Padilla, A. José Mar a Martinez.

San Dimas, July 17, 1872.—Having proceeded with the investigation relative to the killing of James Soto, by the American, James Petiller, a summons was served upon Martin Delgado, who, the court was informed, might be able to give a deposition in regard to this incident, and on making his appearance he was formally sworn.

Previous to this he was asked what he knew of this occurrence, and he said that in the year of the invasion of Durango by the French, he being a magistrate in that mining district, there took place the occurrence of the killing, with a pistol shot, of the Mexican, Teodoro Soto, (not James Soto, as above stated,) by the American, named James Petiller, of which act the deponent took judicial cognizance, and he drew up the corresponding verbal process, which being concluded, he forwarded the same, with an account of the other proceedings appertaining to his functions, together with the culprit, Petiller, to the second criminal tribunal of Durango, then in charge of the licentiate, Lorencio Sencunegui. That from what took place during the proceedings in the case, he remembers what follows as the principal points. The deponent, in his capacity as magistrate, accompanied by witnesses, went to the place where the body of Teodoro Soto lay, and having inquired of James Petiller, who had killed Soto, he replied that he knew him to be Teodoro Soto, and he was aware of the cause why it had been said that he had killed him. These proceedings having been concluded with the inquest and identification of the body of the dead man, it was proved that Petiller was the assassin who had fired the shot at the other, while drunk, and that in consequence of carelessness on the part of the guard, he made his escape, but was immediately re-arrested and imprisoned, until he was sent on to Durango; that he knows nothing of the results which followed in this case; that Petiller was the person who superintended the works of the *Balenos mine*, on account of the owners of said mine, and of that of the Candelario; that the witnesses to the aforesaid assassination were several, because it took place at a ball, but he does not remember the names of those present; that the witnesses in attendance at the inquest held upon the body were D. Guadalupe Martinez and D. Tomaso Rodriguez; that this is all he can say with truth. On this deposition being read to him, he re-asserted the same and corroborated it. He signed before me and my attesting witnesses, the deponent adding that he was a single man; aged forty-four years; a merchant by profession, and of this neighborhood. I certify—(signed,) Cipriano Quiros de la O., Martin Delgado, A. E. Padilla, a José Ma. Martinez.

On this same occasion, there were summoned the citizens Guadalupe Martinez and Tomaso Rodriguez, the witnesses alluded to in the foregoing depositions. I make note of the same for evidence.

SAN DIMAS, *July* 18, 1872.

Present: Guadalupe Martinez, mentioned in the foregoing deposition of Martin Delegado, whom I protest to know, being duly sworn to tell the truth; prior to this formality, he was examined in relation to the deposition of Martin Delegado, and he said that the statements of that gentleman are correct in every part. As
158 the deponent, Martinez, was one of the witnesses in attendance at the inquest over the body of Teodoro Soto, who was killed by the American, James Petiller, which is all that he can say with truth. Upon this deposition being read to him he re-asserted the same, and corroborated it, adding that his name is the same as above stated; that he is a married man; over seventy years of age; by calling a merchant, and a resident of this district.

Signed before me and attesting witnesses. I testify—Cipriano Quiroz de la O., A. E. Pedilla, A. Albino Tonero.

AT SAN DIMAS, *July* 15, 1872.

Present: The citizen, Tomasio Rodriguez, of age, whom I protest to know, who being duly sworn to tell the truth in regard to what he might know, in answer to the questions which should be put to him during these proceedings, he was interrogated as follows:

Were you present at the killing of Teodoro Soto? He replied that he witnessed the act in this manner: he was at a musical party, and by his side was seated the aforesaid Teodoro; the American, James Petiller, came to the ball, and entered with a pistol in his hand, crying "*Hurrah for Mexico!*" and going towards Teodoro, he fired directly at him, from which shot he died in a few hours. Petiller was a little tipsy; that the latter was employed in the mine of Boleños, in the establishment of this mining district, and *not of the Abra of Tayoltita.*

Being asked what was the cause of that act he replied: that at the time of the commission of the act none existed; but that he understood from Teodoro himself, when they were carrying him wounded to his house, the origin of the difficulty arose from the fact that Petiller had ordered Teodoro to carry some tools to his wife, and that in consequence of the conduct of the latter, Petiller was much displeased against Teodoro; what for he does not know; that the offender was arrested and sent to Durango and that he does not know what was the end of the affair. That is all he can say

with truth, adding that his name is the same as above stated; that he is a single man; thirty years of age; blacksmith by trade, and a resident of this mining district. On this deposition being read to him, he affirmed the same and corroborated it.

Signed before me and those of my associates. (Signed) Quiroz de la O., A. E. Pedillo, A. José Ma. Martinez.

REPUBLIC OF MEXICO.

Political Bureau of the District of San Dimas:

This bureau having been made acquainted with the contents of your note of the 18th of last month, I have to say to you, that having *searched the archives of* THIS bureau, under my charge, for some data relative to the loan of $1,200, which the owners of the "Abra" assert to have been imposed upon them in the year 1866, by the officer in command, Jesus Valdespino, by agreement with the political authority of this district in said year, I have found a document which reads verbally as follows:

"E. B. United Brigades—Brigade of Durango—2d Section—Teniente Colonel-in-Chief.

The extreme want which the force under my command is suffering, with which I have received superior orders to come into this district, to which purpose, and in order to sustain said force, I have had conferred upon me sufficient powers to procure means for the maintenance of the same, and of the other forces which I am to organize; but in view of existing circumstances, and being also satisfied that the district cannot, without much inconvenience, afford the means which I find it indispensable
159 to procure, at all hazards, in fulfillment of the duties I have to discharge, with this object in view, therefore, and in order that the people hereabouts may not suffer greater burdens than would be occasioned by my remaining over night, I have determined to take up my march as soon as possible; and in order to accomplish this, I want means, and I confine myself to what is absolutely necessary; thus then acting in conformity with the powers conferred upon me, and in consideration of what has been stated above, you will levy upon those persons in best circumstances, of this district, and of the villages and estates appertaining to the same, the sum of ($1,200) *one thousand and two hundred dollars*, which they will pay within the space of four days counting from to-day. I should desire the political authority not to levy any contribution or loan, and it is painful to me to proceed in this manner, although compelled by the stringent character of my duty. Although determined to withdraw, I wish every good to these people. I strongly urge upon you that the collection of this sum shall be made with the greatest possible care and equality, and of accord with a commission which you will name from among those that are best informed, which commission shall be presided over by the head of that bureau. I avail myself of this opportunity to tender you the assurances of my consideration and distinguished regard.

"Independence and liberty.

"San Dimas, July 27, 1866.

(Signed) "JESUS VALDESPINO.

"To the political chief of this district, present."

And in view of the fact that this bureau is not in possession of more circumstantial dates upon the subject in question, it has been determined to forward these to D. Ygnacio Quiros, who, at that period, was political chief of this district, who, being present, and having read your communication, says, that he does not remember well what the Americans of Tayoltita gave on the occasion, when Valdespino was in this mining district, but that it could not have exceeded two hundred dollars at the utmost, and this was given in the shape of goods, for although this was in the nature of a loan, yet Valdespino, taking into consideration the then existing circumstances of this mineral district, he confined himself to request that they should contribute, voluntarily, whatever they pleased for the support of his force, which was done by making the shares as equal as possible in this mineral district, which was in conformity with the sum mentioned; that he does not remember the amount, because he made no note of the fact, and that it has therefore not been repaid, and that he does not know whether this Valdespino was authorized to raise loans. This he will say: that when Santiago Papasquiero came to this point, he was Governor of the State, and D. Genaro Leyoa, as secretary, wrote to this district, approving of what had been done in behalf of Valdespino. This is all the information that this bureau, under my charge, can give you.

Independence and liberty.

San Dimas, July 19, 1872.

(Signature) ARCADIO LAVEAGA.

To the Judge of the 1st Instance of the District of San Dimas, present.

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SAN DIMAS, *July* 22, 1872.

Having been privately informed that the citizen Refugio Fonseca is the person who was in the service of the Abra Company of Tayoltita, and that, therefore, he must be able to give a circumstantial account of what took place on the occasion of the arrest of the superintendent of that establishment, as also in regard to the animals
160 which may have been taken from the aforesaid company, the said Refugio was consequently summoned; and, being present, he was sworn to tell the truth, as to what he might know, and in respect to the questions put to him. Upon this principle, he was interrogated in the following form:

Do you know what was the name of the superintendent of the Abra; if he was arrested by the magistrate, judge of Tayoltita; how long he was imprisoned; what magistrate ordered the arrest, and what was the result of the superintendent's application to the superior authorities? He replied, that, as a servant of the aforesaid company, he knew the superintendent about whom he is questioned, whose name was Carlos H. Exall; that he was arrested by Judge Nicanor Perez, in consequence of some misdemeanors that the former had committed, because he went to his house (he does not know on what business); that he was imprisoned for three days, and that he does not know whether said Carlos had made any application to the authorities of the State.

On being asked: Do you know if the aforesaid company had any mules; if these, or any of them were seized by the authorities of the district, and if the latter imposed upon said company any burdens, or subjected them to any exactions of violence? He replied that he knew the Abra establishment to be in possession of eight pack-mules and three saddle-mules, of which not even one was taken from them by the authorities of this district, and he is not aware that any burdens had been imposed upon said company, or that they had been subjected to any exaction or violence; that he knows that the people of the establishment sold four of the mules mentioned to Peoquinto Nuñez, one to Calisto Laretto, three which had been stolen from them were subsequently paid for by order of Camilo Perez, who was in authority, which payment was made in current money, and the saddle-mules were taken away by the people of the establishment, when they left. He added that his name was Refugio Fonseca; that he is forty-five years of age; a married man, and a day laborer, and a resident of this mining district. When this disposition was read to him he affirmed the same and corroborated it.

Signed before me, and my attesting witnesses, I certify.

(Signed)—Cipriano Quiroz, Refugio Fonseca, A. Timoteo Jairez, A. Antonio Galaza.

There being no mode of conveyance to San Ygnacio, at the time, either by mail or through private sources, to forward the requisitions decreed by the act of the 15th instant, let this difficulty be made known to the prosecuting attorney, for his information and final disposition. The judge in these proceedings so directed and ordered.

(Signed)—Quiroz, A. E. Padillo, José Ma. Martinez.

San Dimas, July 23, 1872, on this day the communication above alluded to was forwarded. I make note of the same for evidence. (Signed)—Quiroz.

Under the same date, there being present James Granger, the witness alluded to in the foregoing depositions, whom I protest I know, being of age, he was duly sworn to tell the truth, and was examined as follows, in reference to what has been stated by Doña Cecilia Jimenez, in the first page: being asked, have you any proof that the foreigners, Adams and Dana, were in this mining district? He replied, that in the month of April or May, 1870, the aforesaid persons were here; that he understood from Adams himself that he came to take the depositions of some workmen,
161 and that, in fact, he saw him bring some of them from Tayoltita, and that he saw them in the house of Judge Anatasio Milan, but he does not know whether he took their depositions; that deponent being in the court-room, in company with Mr. Dana and General Adams, Milan told deponent and Dana to withdraw from there, which they did, Adams remaining in the court-room; in a short time the latter came to the place where he was, saying to him, in a state of great vexation, "that he was going away, because it was impossible to take the depositions;" that he does not remember anything about the workmen who came from Tayoltita; that the altercation which took place between General Adams and Raphael Martin was not on account of the depositions, but about the altitude of a mound, or hill, which stood opposite.

Being asked who James Petiller was, or what connection he had with the mining establishment; if the latter killed Teodoro Soto with a pistol shot, and if this act had anything to do in originating the claims of the company, said, that he did not witness the occurrence, but that he heard it talked about, and that he, Petiller, was not an employee at Tayoltita.

Being asked what he knew about the imprisonment of the superintendent of the mining establishment of Tayoltita; what was his name; how long he was imprisoned; by what judge; and what was the result of the application which the latter made to the authorities of the State, he replied, that he was a witness to the arrest,

and that his name was Charles H. Exall; that he was imprisoned for two or three days, because he reproved Judge Nicanor Peres for having removed from one room to another in the establishment of the company, and he knew that the superintendent had complained to the Governor of Durango, but that he does not know with what result.

Being asked, have you any proof that in the year 1870, Adams and Dana took Juan Francisco Gamboa, José Ma. Loaiza, and Matias Avalos before the American consul at Mazatlan, and for what purpose; he replied, that he is certain to have seen the latter in Mazatlan, but that he did not know what was their business there; that this is all he can say, with truth, in answer to the questions put to him; he added, that his name was the same as above stated; that he is a bachelor; forty years of age; a miner; and native of Great Britain, and a resident of the mining district of San Vicente.

On this deposition being read to him, he affirmed and ratified the same.

Signed before me and attesting witnesses.

On signing this deposition, he said that Matias went to Mazatlan with Doña Cecilia Jimenez, but that he does not know how the others, Gamboa, and Loaiza went there. I certify— (Signed,) Quiroz, James Granger, A. E. Padilla, A. Emiliano Garcia.

At San Dimas, the 24th of July, 1872, present, Guadalupe Soto, whom I declare I know, and a witness who has to be examined in regard to the points referred to in the foregoing depositions. With this view, he was sworn to tell the truth, in answer to any questions which might be put to him. Prior to this formality, the following questions were put to him:

Question. When you were judge in Tayoltita, in 1867, did you direct and issue the communications dated respectively, the 5th and 4th of July, copies of which have been shown to you, and which appear on page 6 of these proceedings, he replied that he is certain of having issued such communications to the administrator of the "Abra" establishment, and that he did so because there had been a rising of the people to compel him to.

162 Being asked—Have you disposed of, or taken any metals or ores belonging to the Abra mining establishment, and say by whose orders?—He replied that he had never taken even a solitary stone; that what he did was to construct a stone mill on the Guadalupe estate, belonging to the mining company. This work was constructed with the permission of the superintendent, Carlos, and that he will produce evidence of the fact before this tribunal, unless the papers in the case have been lost. That it is true, that they were reducing ores at the said hacienda from the Abra mines, but that these were reduced for, and belonged to the workmen who were working at the mines, under permission granted by the superintendent, which was given for the purpose of protecting the mines; that of the aforesaid laborers, he only remembers Andres Serrano and Luis Acuña, who will be able to give the names of the others; finally, that James Granger, who had control of said establishment, will be able to speak more definitely in regard to the same. That this is all that he can say with truth. On this deposition being read to him, he affirmed and ratified the same; he added that his name is as above stated; that he is a married man; fifty years of age; a tailor of this neighborhood, and a native of Tayoltita; on this deposition being read to him, he added that the communications which he issued were in consequence of the fact, that besides the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora; all in consequence of the failure of the superintendent to contract with the operatives for working the mines; he affirmed and ratified all the preceding statements. Signed before me and my attesting witnesses. I certify. (Signed,) Cipriano Quiroz, Guadalupe Soto, A. E. Padilla, A. Camilo Perez. Continuation:—In view of the allusions contained in the deposition of Guadalupe Soto, relative to James Granger, let the latter be summoned, in order that his deposition may be extended, in what may be deemed proper; the subscribing judge thus directs, orders, and signs with the attesting witnesses. (Signed,) Quiroz, A. E. Padilla, José Ma. Martinez.

At San Dimas, July 25, 1872. Present: James Granger, who was alluded to in the deposition of Guadalupe Soto, and who, being sworn according to custom, was interrogated, as follows:

What position, or employment did you have in the mining establishment of Abra? He replied: At first I was a dependent, or clerk; afterwards, when the superintendent Carlos H. Exall left, I remained in charge as his representative.

On being questioned—Do you know whether Guadalupe Soto disposed of, or took away any metals or ores from the Abra mine?—He answered that he did not see, and has not known that Soto had taken away, or disposed of any species of ores or metals; what he knows is, that this person reduced ores which were brought to him by some of the workmen, which they extracted from the mines by permission, and for which they paid him.

Being asked, do you know of any lawsuit between Guadalupe Soto and the above mentioned superintendent, in regard to one of the mines of the aforesaid company? He answered, that the company had no litigation with Soto on account of the mines, but that there was a lawsuit about the Guadalupe hacienda, which was adjudicated to the company by sentence of the court at Durango. After this, the superintendent agreed to allow Soto to build two stone mills on said estate, in which Soto smelted, and reduced the ores above mentioned; that the above statement is the truth.

163 The above deposition being read to him, he affirmed and ratified the same.

Other particulars relating to himself are not stated, having already been mentioned in his former deposition.

Signed before me and my attesting witnesses. (Signed,) Cipriano Quiroz, James Granger, A. George Sarco, A. E. Padilla.

On the same day, it having come to the knowledge of this tribunal that Bartolo Rodriguez was one of those whom the American, General Adams, had brought from Tayoltita to testify in regard to the damages received by the Abra Company, let him be summoned, in order that he may be examined as to what he may know in the matter of the inquiry which is asked for by the Federal prosecuting attorney, according to the foregoing note. The subscribing judge has so directed, ordered, and signed, in the presence of his attesting witnesses. (Signed,) Quiroz, A. E. Padilla, A. Anastasio Aguirre.

On the same date, appeared Bartolo Rodriguez, whom I declare to know, who being sworn to speak the truth, and understanding the obligation, he was interrogated: Are you one of those who came from Tayoltita at the request of the American, Alonso W. Adams, called General, for the purpose of testifying in regard to damages occasioned to the Abra Company?—he replies, it is true, he is one of those who came, and Guadalupe Soto and Aquilino Calderon will remember the fact.

Being asked, did you make any deposition, at the request of the aforesaid Adams, before what magistrate, and what statement did you make?—he answered, that he made a deposition, at the request of the aforesaid American, before Judge Anastasio Milan, and what he stated was, that on being asked by said magistrate whether the ores deposited in the mine, de "La Luz," were rich, he replied that they were of no account. Subsequently, he was questioned as follows: If he knew why the company of Tayoltita had left?—he answered, because they did not find any silver. Whether the authorities gave guarantees or assistance to the company when requested, he answered, that there had never been any necessity for asking any. Whether there had been any disturbance or robbery at Tayoltita, he replied that until now he had not heard of it. What amount of ores he thought were stored at Tayoltita, he answered that he did not know.

This is what he remembers at present, but there were many more questions put to him; that deponent's deposition was taken down and signed by him before the magistrate aforesaid.

Being questioned, whether he had been requested by the aforesaid American, Alonso Adams, to make that deposition; if the latter advised him what to state, and if any money had been offered him: he replied, that he had been requested by said Adams and James Granger, in Tayoltita, who told him that they wanted some depositions, in which they were interested, in behalf of the company; that they offered to pay him twenty shillings (reales) a day for every day he should be engaged in this business, besides the travelling expenses from Tayoltita; that he received, in payment, something like ten dollars in various sums, some from the hand of Adams, others from Granger, and he remembers that they did not pay him the whole amount due to him, probably because they did not like the truth contained in his deposition. He affirmed and ratified the same. Signed before me and my attesting witnesses. (Signed,) Quiroz, Bartolo Rodriguez, A. E. Padilla, A. A. Aguirre.

164 *Proceedings in continuation.*

Having been informed that Victoriano Sandoval was in the service of the company of the Abra, and that he may know something about the arrest of the superintendent, and the number of mules which were taken from the company, he was summoned, and being present, he was sworn according to custom, and having understood his obligation to tell the truth, he was questioned upon the following points: Being asked what do you know concerning the arrest of the superintendent of the company of the Abra; what was his name; by what magistrate was he arrested; what was the cause of his arrest; and how long was he detained a prisoner; and what was the result of the complaints which he addressed to the superior authorities of the State? He replied, that he was not present when this occurrence took place. Being asked did he know how many mules the company possessed, and if any of them were taken by the authorities of this district, he replied that he, as the servant of the establish-

ment, knew the company to possess about eleven, and that he is not aware, nor did he ever hear, that any authority had ever taken even one animal; and what he knows is that the miners of the establishment sold most of the mules.

Being asked do you know if any authorities have imposed burdens upon said company, or subjected them to any exactions, or violence of any kind, he replied that there were no burdens imposed by anybody, nor was the company subjected to any kind of exactions or violence; that this he remembers, that a military chief, Jesus Valdespino, requested means for the maintenance of his forces, and there was given to him about two hundred dollars, which were raised by voluntary contributions among the workmen and the residents, because deponent gave two dollars, and he knows that Carlos H. Exall, the superintendent, voluntarily contributed $16, and that another American, John Correll, gave a piece of cotton cloth; this last fact he knows by hearsay.

Being asked do you know if any authority has demanded that the company should prosecute their works according as said authority might direct; that they called a meeting of the people and the workmen, exhorting the latter not to work on account of the company, promising that the mines would be delivered up to them, in order that the same might be worked for their own advantage; he answered that he is not aware of such things having taken place, nor did he ever hear anything on the subject.

Being asked do you know, or have you heard, that any authority had forbidden the workmen of the company of the Abra from working on account of said company, and if it be true, that for this reason Aquilino Calderon was ejected from the mine Del Cristo, he replied: that he does not know even from report of the matter alluded to in this question; what he knows very well is, that he, the deponent, being a miner in the mines of said company, the superintendent ordered him to procure people to do the work, promising to pay them all cash for their work, which they did day and night. That in a short time they declined to perform this obligation, promising to pay them ten shillings per day, (reales,) in current money, from six in the morning till six in the evening This they refused again to do, and offered to pay them one-half in money and one-half in goods; and shortly after they repeated their refusal to carry out their promises. Then they were summoned to appear before the authorities, and it was agreed that they should pay a third part in money; at the expiration of a few days, even this they failed to comply with, which gave rise to new com-
165 plaints before the authority, and said authority demanded that they should comply with their obligations, but without resorting to any violent measures or attacks upon property; that this is all he can say with truth.

Being asked do you know whether Guadalupe Soto had extracted ore from the Abra mines, he replied: that he did not know; and that if any ore was found, it must have been that which the workmen were digging for by permission of the company. On this deposition being read to him, he affirmed and ratified the same, adding that his name was as above stated; that he is married; forty-seven years of age; a workman, and a resident of this mining district. He does not sign because he cannot write.

I certify.—(Signed) Cipriana Quiroz, A. E. Padilla, A. Camilo Contreras.

At San Dimas, the 20th of July, 1872, appeared Matias Avalos, one of the persons alluded to in the foregoing official note of the prosecuting attorney, dated the 8th instant, who was sworn to tell the truth in regard to what he knew concerning any questions which might be put to him, and being questioned accordingly:

At what point did you make the extra-judicial depositions obtained from you by those of the Abra Company which Anastasio Milan, the magistrate of this district, had refused to take when requested to do so? He answered that at this point he made no deposition anywhere; that he is certain of having made what he considered an extra-judicial statement at the port of Mazatlan, in the National Hotel, in the presence of various persons, among whom he remembers and knew an American called General and one William N. Camacho, and they both questioned him about the arrest of the superintendent of Tayoltita, and he stated how it occurred: how Judge Nicanor Perez had come to the house of the company to speak with deponent, and the superintendent being displeased with this, remonstrated with Perez, which gave rise to an argument of a disagreeable nature, and on his withdrawing from the place he caused the superintendent to be arrested in the evening, and to be confined in a private house, where he remained until the following day or a lesser period of time, which he does not now remember.

Secondly, he was asked whether he knew for certain whether the people of Tayoltita had made a demonstration against those of the company? He answered that he had heard it so stated, but that they had done nothing.

Being asked if he knew for certain that the company had been robbed of mules, and he answered that four mules had been stolen from the camp; first a saddle mule, and three subsequently; the first came back again, and the other three were paid for

by those who, it was said, had stolen them; this he well knew, because he was in charge of the mules.

He was asked if it was true that they had been prevented by the people from working? He answered that it was true; that this had continued for three days, but that the works were then resumed.

He was asked if it was true that an American who had been sent to Mazatlan to fetch money had been robbed? He replied that it was true, because he had heard persons connected with the company say so. That the above is what he remembers.

He was asked did you receive any compensation for the deposition which you made at Mazatlan? He replied that Mr. James Granger had agreed to pay him twelve dollars on the general's account, but that he did not receive that money for more than two years, when said general gave it to him last May in this mining district.

166 From a memorandum he made of his deposition, at Mazatlan, he said that after writing the same down, at the National Hotel, the deponent, the general, and William, who lived, and lives at Camacho, went to another house, where they began writing, and, from what he saw, correcting his deposition, and from there they took him to the house of the consul, simply asked him if he swore to the deposition he had made, and he answered, yes.

Being questioned—Who took him to Mazatlan, and for what object?—he replied that, at that time, he was in the service of Doña Cecilia Jimenez, and that on account of some difficulty with the latter, he managed to come over, and his arrival having come to the knowledge of the general, the latter detained him, in which he was assisted by James Granger, and then it was that they offered to pay him for his detention.

Being asked—Did you, at that time, which was the month of May, 1870, see Juan Francisco Gamboa, and José Ma. Loaiza, if he knew whether the latter made any depositions in Mazatlan?—he replied, that he was not acquainted with Gamboa; that Laoiza went with them to the port, and that he saw him in communication with the general, and he knows that he also made a deposition, but does not know whether they paid him anything, or not.

Being asked—Do you know if Guadalupe Soto took away any ores from the mines of the Abra?—he replied that he did not know, nor had he heard anything about it. On this deposition being read to him, he affirmed and ratified the same; adding that his name is as above stated; is married; thirty years of age; a day laborer, and a resident of this mining district; he does not sign, because he cannot write. I certify. (Signed) Quiroz. A. E. Padilla, A. Camilo Contreras.

In continuation, appeared Guadalupe Soto, who produced the evidence which he proffered in his deposition, of page 15, which was added, and is contained in page 19. I certify to the same before those in attendance. (Signed,) Quiroz, A. E. Padilla, A. José Ma. Martinez.

(Copy.)

The American, Charles H. Exall, as the representative of the mining company of the Abra, and D. Guadalupe Soto, enter into the following agreement:

Mr. Exall grants permission to said Soto, for the period of six months, counting from this date, to use the mining works (beneficio de metales) on the land formerly known as the Guadalupe Estate of Tayoltita, in the mining district of Tayoltita, on the following conditions:

1stly. Mr. Soto pledges himself not to destroy nor injure the structures and implements which are at present to be found in said mining land, but, on the contrary, to take care of the same as best he may, in behalf of Mr. Exall.

2dly. At the end of the aforesaid six months, Mr. Soto will deliver said land to Mr. Exall, or his successor, with all the improvements and implements which said Soto may have introduced in it, always recognizing him as the proprietor of the company of the Abra, without charging him anything for the improvements and works which he may have introduced upon the land aforesaid during the period mentioned, as, in the like manner, Mr. Exall should not exact anything for rent.

This agreement does not prevent the contracting parties from entering into a new agreement, extending the term or any other agreement satisfactory to both parties. San Dimas, February 7, 1868. (Signed,) Guadalupe Soto, Charles H. Exall.

167 We, the undersigned, the parties to the foregoing contract, mutually agree by these presents, that said contract shall continue in all its force and effect, and upon the same terms and conditions, for another term, which shall not exceed seven months, as follows: Beginning on the 7th of August of the present year, and ending on the 7th of March, 1869.

To conclude this, we have signed this day, August 7th, 1868, appending signature and seal. (Signed,) Guadalupe Soto. James Granger.

At San Dimas, the 29th of July, 1872, appeared Aquilino Calderon, whom I certify I know, a witness, and deponent alluded to in the deposition of Bartolc Rodriguez,

page 16; he was sworn to tell the truth in answer to the questions which might be put to him, and impressed with this obligation, he was asked, are you one of those who were called upon at Tayoltita for the purpose of being brought over to this place to testify in the matter of damages occasioned to the company? Relate all that took place until your arrival in this mining district: He replied, that two years ago, more or less, there came to Tayoltita an American called General, and deponent being at the mine La Luz, James Granger sent for him, and having appeared before Granger and the General, he was asked: first, if it was true that the people had risen against the Americans of the company? He replied to them that he did not know, because he had not been at the ball on that night; James Granger contradicted him, saying that he was certain of it because the people went about armed with cutlasses, and deponent saying to him that he did not know it; then the General asked Granger what deponent was saying; and the latter said, as he understood him, that he was certain of what he was asking, and continued writing the deposition.

Secondly, they asked him if it was true that Marcos Mora had gone to Tayoltita to suspend the operation of the mines, and he answered, that he did not know; James Granger contradicted him, affirming that he had gone there for that purpose; that he had been at the port of the Reventon. This being concluded and written down, Granger said to deponent not to mind anything, that he would have to come to this place to make the same deposition; that they should pay him twelve shillings (reales) a day, for every day he was engaged in this business; that, on the following day, the General, Granger, Doña Cecilia Jimenez, Guadalupe Soto, and deponent, came from Tayoltita.

Being asked did you make any deposition in this mining district, before what magistrate, what were the questions put to you, and what did you state, he replied, that being in this place, he presented himself at court, by order of Judge Anastasio Milan and the latter having asked him if it was true that the people of Tayoltita had risen against the Americans, he said in reply that there had been no disturbance; that what had taken place was a demand or request that they should comply with the obligations of their contract to pay them for their labors as it had been agreed upon; that other questions were put to him, but that he does not remember them; but that he remembers that most or all of them were answered in the negative. He recollects being questioned by Judge Milan if he knew whether all or any of the mines of the company of Tayoltita were being worked without permission of said company, he answered him that he knew some of the workmen were so engaged, but by permission of those in charge, like Mr. James Granger, who had granted leave to many of them.

That the general, in view of the statements of deponent, asked the aforesaid
168 judge that he might be allowed to question deponent himself, and this not being permitted, the general was very much annoyed,

Being asked what other persons had come from Tayoltita to make depositions, or that any one from this place had made depositions concerning damages to said company, he replied that he did not know of any one having come, besides Bartolo Rodriguez, and as to those belonging to this place, he does not know that any of them have made depositions.

Being asked who were the witnesses in attendance when he made his deposition, he replied that he thought they were Camilo Contreras and Gil Ruiz.

Being asked if it was true that the authorities of this district and the people of the village were hostile to the company, that they demanded that the works should be conducted according to their wishes, that they had called upon the people and the workmen not to work on account of said company, promising to deliver up their mines to them, in order that they might work them for their own advantage, he replied, that he did not know, nor had heard of it; that what he knew was that those of the company having failed to carry out their contract to pay, as they had pledged their word to do at various times, the workmen exacted what was their due, refusing to work until what had been agreed upon was paid to them; and in consequence of this unanimity, they deemed wrong that the deponent should have gone out to work at the mine, and they ordered him away from the mine of Del Cristo, where he held the position of crusher.

Being asked. do you know if during those years any of the mines of the Abra have been attacked by the people, he replied, that it was not true, for he had never heard of it.

Being asked if it was true that Guadalupe Soto had taken away ores from any of the mines of the Abra, he replied that he did not know.

Being asked, do you know if the company of the Abra was in possession of mules, and if any of them have been forcibly taken away by the authorities of this district?—He replied, it is true that they had some animals, which were disposed of by the people of the company, without a solitary one being taken by the authorities; nor were any exactions imposed upon them. That the above is the truth, which he affirms and ratifies. This deposition being read to him, he added, that his name is as

above stated; that he is married; fifty-six years of age; a laborer; and a resident of this mining district; he does not sign, because he cannot write. (Signed,) Cipriano Quiroz, A. Camilo Contreras, Gil Ruiz.

Subsequently appeared Gil Ruiz, the witness alluded to by the deponent, Aquilino Calderon, who, being sworn according to custom, and understanding the obligations of an oath, he was interrogated:

Were you one of the attesting witnesses during the deposition which Aquilino Calderon made in the year 1870, relative to damages sustained by this company, and what were the troubles which occurred on that occasion between Judge Anastasio Milan and the American, styled general? He replied that he did not remember whether he attended as a witness during the proceedings referred to, but he remembers that he noticed great annoyance on the part of said American, because the depositions did not turn out as he desired; this was a supposition on his part, because he could not understand the language that he spoke. That this is what he can
169 say with truth. On this deposition being read to him, he added, that his name was as above stated; that he is married; forty-six years of age; a silversmith; and a resident of this vicinity. Signed in my presence and those attesting witnesses. (Signed) Quiroz. Gil Ruiz, A. Camilo Contreras, A. Podilla.

On the same day appeared A. Camilo Contreras, whom I declare I know; who, being sworn to speak the truth, and understanding the obligation of an oath, was asked—Do you know whether the American, Alfred A. Green, was arrested in this place, and and that he was expelled from the mine of San Luis? State the reasons which operated in both these events. He replied that he knew of the arrest of the party mentioned, but that he does not remember the cause. With regard to the mine of San Luis he knows that it was taken from him, in consequence of its being reported against by the Messrs. Laveago as being in ruins.

Being asked—Do you know whether, during the time that the Americans were working at Tayoltita they were prevented by any authority from working at their mines, and if any of these mines were attacked by the people of the village or by laborers. He answered that he knows nothing about what occurred at Tayoltita; that this is what he can say with truth. And this deposition being read to him, he affirmed and corroborated the same. Signed before me and my attesting witnesses. I certify. (Signed) Guiroz. Camilo Contreras, A. E. Podilla, José Ma. Martinez.

In continuation, appeared citizen Paz Gurrola, whom I certify I know, and who is one of the persons alluded to in the foregoing proceedings, he was sworn to speak the truth in regard to any questions put to him; he was accordingly asked: are you acquainted with the circumstances of the arrest of the American Alfred A. Green, by Judge Camilo Perez, in this place? State what took place in relation to that affair: he replied, it is true that the aforesaid magistrate placed the American alluded to in the prison of this place, and the cause of the arrest was an act of disrespect committed towards the authority of Judge Camilo Perez, who required him to pay an amount which he owed for the care of one of his animals.

Being asked: Do you know the cause for which the aforesaid Green was expelled from the mine of San Luis? He replied, that he knows it from report and the cause was that said mine was reported against by Messrs. Laveaga as being in ruins, and that proceeding in the case having been submitted before a competent authority, judgment was pronounced in favor of the informers.

Being asked: Do you know whether any authority, or assemblages of people in Tayoltita, made hostile demonstrations and attacked the property of the company? He replied, that it is not true that attacks had been made upon any interests of the Abra Company, either by the authorities or by private parties.

Being asked: Do you know whether D. Guadalupe Soto had taken away any quantities of ore from any of the Abra mines? He knew nothing of it, even by report.

Being asked: Do you know whether the people of the Abra Company, at Tayoltita, have been molested by the authorities and the people of the village and prevented by them from working at their mines? He replied, that he knows nothing about this; that what he knows from common report is, that the destruction of that establishment was owing to the fact that their employees, which were both numerous and
170 useless, consumed a large amount of money for their wages, and that being subsequently in want of means they disposed of the furniture, even to the accontrements of the animals, which deponent had bought, and that if the large accumulation of rocks, denominated ores from their mines, by the company, was not disposed of, it was because they were not even worth the cost of crushing.

Being asked: Do you know if the superintendent of the company of Tayoltita was arrested in this mining district? State the fact, and what was the cause? He replied, that he knows nothing about it, even from report; that this is what he can say with truth, all of which he affirmed and ratified. On this deposition being read

to him, he added that his name is as above stated; that he is a bachelor; thirty years of age; a merchant, and a resident of this neighborhood.
Signed before me and my attesting witnesses. (Signed,) Cipriano Quiroz, Paz Gurrola, A. M. Cordoban, A. Gil Ruiz.

On the same day, appeared citizen Martin Delgado, whom I certify I know; he was sworn to speak the truth in regard to questions put to him, and being impressed with this obligation, he was asked—Do you know if the American, Alfred A. Green, was imprisoned in this place, and what was the cause of such imprisonment?—he replied. it is true that he was imprisoned by order of Judge Camilo Perez, and the cause was that the latter having exacted from him payment of a debt for which he was sued, he was guilty of want of respect to the court.
Being asked: Do you know if said Green was expelled from the mine of San Luis? He replied, that the aforesaid mine was taken away from Green, on account of a denunciation which the licentiate Rodrigo Duran made against it, before the government of the State, as the representative of the house of Laveaga, which denunciation was founded on the fact, that the mine was deserted and in ruins, and that superior authority forwarded the denunciation to the president of this municipality, which office was then filled by deponent, on account of the suspension of the supreme civil authority, Dn. Arcadio Laveaga, in order that the condition of the mine might be inquired into by an expert. These proceedings having been complied with, as well as those of publication by common crier, Alfred Green made opposition, of which the Government was informed, and this superior authority, in view of the circumstances, directed the case to be referred to the judicial authority, which decided it.
Being asked: Do you know if any authority, or assemblage of mutinous people, have made attacks of any kind upon any property of the Abra Company? He replied, he does not know it even from report.
Being asked: Do you know whether Guadalupe Soto took away ores from any of the mines of the Abra Company? He replied that he did not know.
Being asked: Do you know if any military force, or authority of this district, have imposed any taxes upon said company? He replied that he knew that a military commander, Jesus Valdespino, had solicited from the inhabitants of this place, some assistance for his troops, and that it was willingly given to him by every resident of means, as in the case of deponent, who contributed a small portion.
Being asked: Do you know if the superintendent of the Abra Company was put under arrest at this place? He replied, that he did not know; that the above is the truth in regard to the questions put to him, which he affirmed and ratified.
171 This deposition being read to him, he added, that his name is as above stated; a bachelor; forty-four years of age; a merchant, and a resident of this place. Signed before me and my attesting witnesses. (Signed) Quiroz. Martin Delgado, A. E. Podilla, A. José Ma. Martinez.

San Dimas, August 5, 1872.—Appeared citizen Gil Ruiz, whom I certify I know; he was sworn to tell the truth in regard to what he might know about the questions put to him.
Being asked: Do you know anything about the imprisonment in this place of the American, Alfred A. Green, by Judge Camilo Perez, and what was the cause of it? He replied that he did not know from personal observation, but from hearsay; and that the cause was that said Green had refused to pay a debt for which he had been sued; in which refusal he had been wanting in respect towards the court.
Being asked: Do you know why the aforesaid Green was expelled from the mine of San Luiz? He replied that this mine had been denounced by the house of Messrs. Laveaga as in ruins.
Being asked: Do you know if any authority or mutinous assemblage of the people of Tayoltita have made any attacks upon the property of the Abra company? He replied that he can say nothing with certainty about what took place in Tayoltita. That this is all he can say with truth, which he affirmed and ratified. This deposition being read to him, he added that his name is as above stated; that he is married; forty-six years of age; a tin-worker by trade, and a resident of this neighborhood. Signed before me and my attesting witnesses. I certify. (Signed) Quiroz, Gil Ruiz, A. E. Podilla, A. José Ma. Martinez.

At Dimas, August 6, 1872, appeared Guadalupe Soto, who was summoned in consequence of allusions made to him in the deposition of Bartolo Rodriguez, page 16. He was sworn to tell the truth in regard to questions put to him, and, being impressed with this obligation, he was asked, Are you one of those whom the American styled General Alonzo W. Adams, in company of Mr. Daua, called upon at Tayoltita for the purpose of inducing you to make depositions in regard to damages sustained by the Abra company? He replied that it is true that he was one of those who, together with Bartolo Rodriguez and Aquilino Calderon, came from Tayoltita to this place at the

request of Adams to make depositions in regard to injuries sustained by the Abra company; that for this service the aforesaid parties were promised two dollars per day, and deponent was promised an animal to ride upon and a reward; that being in this place, Adams, foreseeing that the deposition of deponent would not be favorable, did not wish him to testify, and being displeased he took away the animal from him, and did not pay him one cent of the gratuity promised.

Being asked: Do you know that Judge Anastasio Milan refused to take depositions at the request of Adams concerning injuries sustained by the Abra company? State if this be true, and what was the cause of the refusal? He replied that Judge Milan did not refuse to take the depositions of Bartolo Rodriguez and Aquilino Calderon, seeing that they were examined with the exception of deponent, because Adams did not wish it; that this is what he can say with truth in regard to the questions put to him, which he affirmed and ratified. This deposition being read to him he signed it before me and my attesting witnesses. I certify. In signing he added that his name is as above stated; that he is a married man, a tailor, and a resident of this place. (Signed) Quiroz, Guadalupe Soto, A. José Ma. Martinez.

172 First conciliatory court of first instance of San Dimas.—Among the inquiries ordered to beinstituted by the prosecuting attorney of the Government, relative to American claims against Mexico, there is one item which reads literally as follows:

It is stated that Mr. Exall, superintendent of the Abra company, was imprisoned in that mining district. Be pleased to find out whether, in that court or among the archives of the executive bureau, there is any notice or data of that arrest and of the causes which led to it.

I enclose it to you for the purpose to be attained in that office.

Independence and liberty. San Dimas, August 5, 1872. (Signed) Cipriano Quiros, citizen, chief of the civil service of this district.

San Dimas, August 6, 1872. This office having been fully informed of the contents of the foregoing note, I have to inform you, in reply, that touching the point alluded to in your note, there does not exist in this office any data, nor any knowledge, that the person alluded to has been imprisoned in this mineral district.

Independence and Liberty San Dimas, August 6, 1872. (Signed,) Arcadio Laveaga. (Gefe Politico.)

At San Dimas, August 8, 1872, appeared C. Dionisio Gutierrez, whom I certify I know, mentioned in the deposition of Doña Cecilia Jimenez, (page 15,) being sworn according to law to speak the truth in regard to questions put to him—

Being asked, Do you know who were the persons that made depositions before Judge Anastasio Milan, relative to an inquiry instituted by the American citizen, styled General Adams, for the purpose of ascertaining the injuries sustained by the Abra Company? He replied, that the persons he remembers to have made depositions, were the citizens Bartolo Rodriguez and Aquilino Calderon.

Being asked, Do you know if Judge Anastasio Milan refused to take any depositions at the request of the American, Adams? He replied that, at that time, this American requested Citizen Milan to go with him to Tayoltita, to enter into certain proceedings relative to his claim; and Mr. Milan having done so, he took deponent along with him, who being in Tayoltita, noticed that the aforesaid American, Adams, was taking depositions from some of the laborers, by himself, and without the intervention of the authority of Mr. Milan, taking down said declarations with pencil, on loose pieces of paper; that subsequently, in view of the fact that the authority of Mr. Milan had not been consulted in the least, the latter came to the conclusion that deponent and himself should come away from Tayolita; that after the expiration of a few days, the aforesaid American returned to this mining district, and called at the house of deponent, requesting the latter to write down something for him, in order that Judge Milan might credit what he had written down in pencil, in Tayoltita; that Judge Milan, in view of these solicitations, summoned those deponents or individuals alluded to by Adams, and these being examined, the result was altogether different from what Adams had pretended, which caused so much annoyance to the latter that he left this mining district; that the above is the truth, and what he remembers at present, which he affirmed and ratified. This deposition being read to him, he added, that his name is as above stated; that he is married; thirty-six years of age; and a resident of this neighborhood. Signed before me and my attesting witnesses. I certify. (Signed,) Cipriano Quiroz, Dionisio Gutierrez, A. E. Podilla, A. José Ma. Martinez.

173 San Dimas, August 13, 1872. There being no other persons to be examined about the foregoing depositions, these proceedings are considered as ended; consequently, they will be forwarded to the prosecuting attorney of the Government. The judge of the first conciliatory court and of 1st instance thus orders it, and signs before those in attendance. (Signed,) Cipriano Quiroz, A. E. Podilla, A. José Ma. Martinez.

On the same day, these proceedings, amounting to twenty-seven folios, were transmitted. I note the same for evidence.

(Signatures)

Compared. True copy. Mexico, November 12, 1872.

(Signed) JUAN DE DIOS ARIAS,
Chief Clerk.

EXHIBIT No. 4, (1872.)

[Translated.]

To the Judge of the District:

The attorney of this district, before you, says: That, by order of the Minister of Foreign Affairs, we are taking some information that can be used for the defence of the Republic, against the claim that Americans are making on behalf of the company that owned the mines of the Abra, in the district of San Dimas; and as the statements of the licenciado Jesus Torrez, and of Francisco Acosta, who were neighbors of that Mineral, may be useful to the object, the subscriber begs that you ask to appear the two persons mentioned, and to examine them in due form, making the following questions: To the first, if the annexed letter is written by him, and if he will affirm and ratify it in all that it contains? And to the second, to whom you will show the same letter, if he knows, of his own knowledge, if all the facts embraced in said letter are true? After this is done, you will please send the original to the subscriber, to be transmitted to the said Ministry. Durango, July 31st, 1872. (Signed) J. M. Hernandez.

Durango, July 30th, 1872. To the Senor Licenciado José M. Hernandez, present. Dear Sir: The Abra mine, in the Mineral of Tayoltita, in the district of San Dimas, has been known so long, that Humboldt alluded to it in his history on the mines of Mexico; that it was denounced by, and legally became the property of some American citizens, in the year 1863, after having lain idle and abandoned for many years; that these Americans offered a Spaniard, named Juan Castillo de Valle, the sum of $50,000 for the "Luz" and Rosario mines, the only ones that were worked at that time, and agreed to make the offer good, provided they should succeed in forming a company in the United States; that they afterward returned and bought the mines, in the price as before stated, and gave to the enterprise the name of "La Abra;" that on account of the large price, as it was considered, which had been paid for said property, the transaction came to be widely known, and excited public attention, not only in San Dimas, but also in the capital of Durango; that I, who have lived about ten years in the said district of San Dimas, and well informed in regard to said mines, and knowing that they only yielded from eighty to a hundred *cargas* of ore per month, and being well aware that the said D. Juan Castillo had been working them for ten years without any profit whatever, could not help but show that said Americans had been away for the purpose of deceiving the capitalists of the United States, in
174 order to carry into effect a profitable speculation for themselves; that this is really the truth of the business I was convinced from the movements of said Americans themselves, for they did not go to work in the mines in a regular way, but rather failed to observe the smallest details usually taken into account in the working of mines; that their first operation was to pile up a lot of *tepetate*, or rock that does not yield silver, to the amount of from ten to fourteen thousand *cargas*, which they denominated ore; that this was heaped up and covered over with about three or four hundred *cargas* of real ore in the hacienda of Tayoltita, and all of it designated as ore by them, in order that it might be seen by an agent, or commissioner who came from the United States for the purpose of examining into the enterprise on behalf of the company in that country; that such being the fact, it afterwards turned out that the ore failed to yield as much silver as had been calculated upon, which fact naturally gave rise to the supposition that they had been robbed by their employees, with the knowledge of the authorities, which is entirely false, as can be fully substantiated by going to the hacienda of Tayoltita, where the pile of rock alluded to can still be seen, without any one taking the slightest notice of it; that the foregoing is all the information I can give you in answer to your letter of this date; that D. Francisco Acosta, of this city, is perfectly well informed in regard to this matter, as also D. Juan Castillo, as well as D. Miguel and D. Arcadio Laveaga, D. M. Delgado, and D. Camilo Contreras, of San Dimas, and finally all the residents of that place.

I am, &c.,

(Signed) JESUS TORRES.

DURANGO, *July 31st*, 1872.

On the day and year first above written, Francisco Acosta was examined before the aforesaid Juez de Paz, Geronimo Lido, having been sworn according to law, says, as to his generalities, that his name is as expressed; that he is forty-seven years of age, married, and a merchant of this place. Being asked if the matters are true which

Jesus Torres refers to in his letter which is now exhibited to view, says that the statement made in the foregoing letter now presented before him is an exact account of the particulars of the transaction to which it alludes. Signed and confirmed before me, the judge.

(Signed) GERONIMO LIDO,
" FRANCISCO ACOSTA,
" JUAN B. ARELLANO, *Sec'y.*

Jesus Torres was then affirmed according to law, and said as to his generalities, that his name is as stated, thirty-nine years of age, married, an attorney of this place. Being asked if it is his signature which appears in the letter which is now presented to view, and if he affirms and ratifies in full its contents, answers that it is his signature, and that he reaffirms and ratifies its contents. Wherewith he concludes the present, which he signs with me, the judge, who certifies.

(Signed) GERONIMO LIDO,
" JESUS TORRES,
" JUAN B. ARELLANO, *Sec'y.*

DURANGO, *July* 31, 1872.

These examinations being concluded are returned to the district attorney.

(Signed,) LIDO.
" ARELLANO.

It is a copy. Mexico, November 4, 1872.

JUAN DE D. ARIAS, *Ch. Clk.*

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Deposition of Don Juan Castillo de Valle.

EXHIBIT No. 1, (1872.)

[American section.] [Translation.]

Mexican Republic—Second class—For the years 1870 and 1871.—For criminal proceedings instituted before all the courts in the Republic.—Good for the years 1872 and 1873. J. Torrea—A flourish. J. M. Flores Caro—A flourish. To the district judge. The undersigned, prosecuting attorney, comes before you and represents, that he has been ordered by the department of relations, under date of the 3d instant, to promote before you and amplify the investigation made before that court, and the depositions of licenciado Don Jesus Torres, and Don Francisco Acosta. You will, therefore, be pleased to examine, in due form, Don Juan Castillo del Valle, in regard to the interrogatories below, as well as all other persons who may be mentioned by him, in order that they may state the reasons why they are acquainted with some, or all of the facts referred to in said interrogatories. The undersigned also prays, that as soon as the proceedings are ended, the original record thereof be delivered to him, to be sent to the department. Durango September 24th, 1872. (Signed) José Maria Hernandez.

Interrogatories.

1st. State your name, age, occupation, and residence.

2d. If you have been a resident of San Dimas, state in what year you changed your residence?

3d. State whether you are acquainted with the mine called La Abra, in the mining district of Tayoltita.

4th. State whether you know that, finding said mine entirely abandoned, it was denounced by some Americans, in the year 1863; and whether it was confirmed to them, in accordance with the branch of the law governing mining operations? State also, whether you know the names of the parties to whom it was thus confirmed, or that of the principal one of them?

5th. State, if it is true, that these same Americans, then being owners of the Abra mine, offered to buy from the deponent the mines called "La Luz," and the "Rosario," which were then being worked by said deponent, and that, to carry said offer into effect, they represented that they were going to organize a company in the United States?

6th. State, if it is true, that, after the lapse of some considerable time, these same Americans returned to San Dimas, closed the bargain, and, by paying the price agreed upon, became owners of the "Abra enterprise," and state also, what was the price he received as the result of such contract?

7th. State whether it is true, that the said mines only yielded from eighty to a hundred cargas of ore monthly; whether, in ten years that the deponent worked said

mines, he ever obtained ordinary profits; and whether, in his judgment, from all the circumstances attending the transaction, the Americans in reality made a speculation upon the credulity of those who constituted the company in the United States, by representing the acquisition of said mines as of great advantage to them, when in reality no profit arose from them?

8th. State whether you can positively affirm that the Americans did not work the mines in a proper manner, failing even to observe the most common practices and customs, and that on the contrary the only thing they endeavored to do was to pile
176 up a large heap of from ten to fourteen thousand cargas of tepetate, or rock, entirely destitute of silver, gold or any other value, and to which material they applied the name of ore, without its being such; state also if it be true that they covered over this immense heap of unproductive rock, with a layer of from three to four hundred cargas of real ore, and left the whole of this large pile of rock thus covered in the hiacienda of Tayoltita?

9th. State whether you know that the aforesaid quantity of rock was thus disposed by the Americans, so that it might be seen by a commissioner that was sent to San Dimas by the company which had started the enterprise?

10th. State also whether you can certify that, upon commencing to beneficiate this heap of rock, it naturally turned out that no silver could be realized therefrom, and that then the Americans, in order to conceal their fraud, circulated the story that the ore had been robbed by the workmen, with the toleration of the authorities, which is a falsehood so apparent that it can be proven from the fact that this large heap of ore still remains, without any one thinking enough of it to disturb it?

11th. State, finally, what persons, resident in this city, are informed and can testify in regard to any or or all of the acts referred to in the preceding interrogatories?

Durango, same date.

(Signed) HERNANDEZ.

DURANGO, *September* 24*th*, 1872.

Proceed to take the depositions as solicited.

(Signed) LIDO. F. B. ARELLANO, *Secretary*.

The prosecuting attorney was notified, when he acknowledged service.

(Signed) HERNANDEZ.

" ARELLANO.

On the 26th of the same month, personally appeared D. Juan Castillo del Valle, who, upon being sworn according to law, was examined on the interrogatories of the prosecuting attorney, and answered to the—

1st. That his name is already stated; is 49 years of age; married; a merchant, and a resident of this city.

2d. That he resided in San Dimas, and that he changed his residence in September, 1865, to settle in this capital city, after his return to Europe.

3d. He made answer in the affirmative.

4th. That it is true, and that although he does not recollect the names of all the owners, he remembers that those of Thomas F. Bartohlow and David J. Garth, were among the principal ones.

5th. That it is also true.

5th. That he received as the price of the "Luz," "Rosario," "Cristo," "Ynocentes," and "Arrayon" mines, with the hacienda, for beneficiating ores, situated in the mining district of Tayoltita, called "San Nicolas," the sum of $50,000, and that the Americans, as expressed in the interrogatory, added these mines to the Abra company, or enterprise.

7th. That the business formerly established by the respondent produced from eighty to one hundred cargas, and at some times as high as two hundred cargas a month, but that it never was a business productive of large gains, and only yielded enough to enable the mines to be kept in such condition as to make them salable to him;
177 that in regard to what is contained in the remainder of the interrogatory, he has heard various stories, generally unfavorable to the reputation of the Americans who purchased the mines, but that he knows nothing in regard to them of his own personal experience, for the reason that he did not return to Tayoltita, and for other different causes.

8th. That he has heard that it was so.

9th. That he has also heard it stated.

10th. That he knows from what has been said by the public in general that no robberies of ore took place, but that the Americans pretended that such crimes had been committed for the purpose of covering their operations, and that he insists that it be taken into consideration that in regard to this he does not certify to anything from observation.

11th. That the licentiate, D. Jesus Torres, and D. Francisco Acosta, can testify in regard to the acts referred to in the interrogatories.

In this manner the present proceedings were concluded, which, after having been read to him, the deponent certified to and signed with the judge, before me. I certify.

(Signed) GERONIMO LIDO.
" JUAN CASTILLO DEL VALLE.
" JUAN B. ARELLANO,
Secretary.

DURANGO, *Sept. 26th*, 1872.

Return to the prosecuting attorney.
(Signed) LIDO.
ARELLANO.

It is a copy.

MEXICO, *February* 13, 1873.
(Signed) [Illegible.] TRANSLATOR.

[Translation.]

"EXHIBIT NO. 2."

1872. Court of First Instance, on the Bench of San Dimas.

Depositions of witnesses examined by order of the prosecuting attorney of the government, of the circuit court of Durango, in regard to the injurious acts against the Abra enterprise, in Tayoltita, belonging to the American company.

Office of the prosecuting attorney of the Circuit Court of Durango.

By order of the ministry of foreign relations, of date the 3d instant, the taking of depositions, which has been commenced, is to be gone on with, relative to the Abra Mining Company.

You will, therefore, be pleased to examine, without delay, and with all due form, Messrs. D. Miguel, and D. Arcadio Laveaga, D. Martin Delegado, D. Camilo Contreras, and D. N. Manjarrez, together with some others of that district, who may be competent to answer the annexed interrogatories:

As soon as the proceedings shall have been concluded, please transmit me the originals of the same, without delay, in obedience to the order of the ministry, so that they may be sent on to the said bureau.

Independence and liberty. Durango, September 24th, 1872. (Signed) José M. Hernandez.

The judge of the 1st instance of the district of San Dimas.

178 *Interrogatories.*

1st. State your name, age, occupation, and residence.

2d. State in what year you changed your residence.

3d. State whether you are acquainted with the Abra mine, in the mineral district of Tayoltita.

4th. Are you sure that, said mine having been entirely abandoned for many years, it was denounced by some Americans, in 1863, to whom it was confirmed, in accordance with the laws in relation to mining; what were the names of those by whom it was denounced, or at least that of the principal one of them?

5th. State whether it was true that the said Americans, who were then owners of the said Abra mine, offered to purchase from the deponent, the mines called "Luz" and "Rosario," which were then being worked by the said deponent; that they pretended that in order to carry out the contract, they were going to organize a company in the United States?

6th. If it is true, that after the lapse of some little time, they returned to San Dimas, closed the contract, and paid the deponent the price that had been agreed upon, and that being then the owners of the said mines, they gave to the property the name of the "Abra?"

What was the price the deponent received by virtue of said contract?

7th. If it is true that the said enterprise only produced from 80 to 100 cargas of ore monthly; if in ten years that deponent worked said mines he never obtained regular profits therefrom, and if, in his judgment, taking all the circumstances relative to this operation, the said Americans speculated upon the credulity of those who constituted the company in the United States, by making it appear to them that the

acquirement of said mines was of great importance, when, in reality, they obtained nothing from the same.

8th. State whether you know, positively, that said Americans did not work the said mines in the customary manner, not even according to the usages and customs most known and practiced, and whether, on the contrary, if they did not get out a large lot of ten or fourteen thousand cargas of pure tepetate, or rock that absolutely contained no silver, gold, or other substance of value, and to which rock they gave the name of ore, which it was not; state, also, if it is true that they covered over this immense heap of unproductive rock with a layer of three or four hundred cargas of real ore, and that this large amount of rock thus covered was heaped up by them in the hacienda of Tayoltita?

9th. State whether you know that this heap thus prepared was prepared by the Americans, in order that it might be seen by an agent sent to San Dimas, by the company established to carry on the said enterprise?

10th. State also, if you know that, naturally enough, when this pile of rock came to be put through the process of beneficiation, it was found to be entirely destitute of silver, and that then the Americans, in order to hide their fraud, gave it out that the operatives had stolen the ore, with the toleration of the authorities, the proof of which is so false that the said heap of rock still remains, without being disturbed by any one?

11th. State, finally, what persons that may be found in this city that are competent to testify in regard to all, or some of the acts referred to in these interrogatories?

DURANGO, *September 24th*, 1872.

179 SAN DIMAS, *October 4th*, 1872.

On account of having received the order of the prosecuting attorney of the circuit court of this State, together with the accompanying interrogatories, of date the 24th September last, I acknowledge the receipt thereof, and proceed to take the depositions referred to therein, summoning to that end, the gentlemen, Miguel and Arcadio Laveaga, Martin Delgado, Camilo Contreras, and Ygnacio Manjarrez, to whom reference is made in the said order. The judge of first instance, on the bench of this district, thus decrees, orders, and signs before the assistant witnesses.

(Signed)—Cipriano Quiroz de la V., A. E. Padilla, Manuel Torrero.

Summons was served on the said persons, and certified accordingly.

SAN DIMAS, *October 9th*, 1872.

Deposition of Ygnacio Manjarrez.

Ygnacio Manjarrez being present, and to whom I certify as being known to me, was sworn to tell the truth in regard to all he might know, or that might be asked of him, and upon being interrogated in the order of the preceding questions, he made answer to the—

1st. That his name is as has been stated, unmarried, of age, a merchant and miner by occupation, and a resident of this mineral district for some years.

2d. That he has resided in this district, but changed his residence in February, 1867, removing from Tayoltita to Buena Vista, in this State.

3d. That he is acquainted with the Abra mine, in the district of Tayoltita.

4th. That it is true that the said mine, being abandoned, was denounced by some Americans, the names of which he does not recollect, and was confirmed to them in accordance with the laws applicable to such transactions.

5th. That these Americans, being then owners of the Abra mines, went to the United States, and others came back, probably to represent them; and that in connection with these last mentioned, happened, as he will certify in the following:

6th. That after some time had passed, one of the Americans who went back returned, in company with others, among whom were one Thomas J. Bartholow and one David J. Garth, and then, in 1865, contracted for the mines called Rosario, Luz, Arayan, and Ynocentes, with D. Juan Castillo, partner of the deponent, in the sum of $50,000, the writings regarding which contract were drawn in Mazatlan, and following which the said sum was paid, they thus remaining owners of said mines, which were named by them the "Abra Negociation."

7th. That it is true that this enterprise produced monthly from eighty to an hundred cargas of ore—all rubbish; that in teh years that the deponent and Castillo worked, they never made more than enough to economically carry on the works which they had begun; that in his judgment he believes that the Americans speculated upon the credulity of those who constituted the company in the United States, by representing to them that the acquisition of said property was of great importance, when in reality it was only limited as regards its productiveness, as he has stated.

8th. That he knows that the Americans engaged in the working of the Abra
180 mining property did not carry on the same in accordance with the ordinary customs and usages; that they took out a large pile of rock, of a little more than three thousand *cargas*, distinguishing the same by dividing it into first, second, and third qualities, but which was good for nothing, as it was nothing but pure *tepetate*, with here and there a lump of good ore; that having obtained this heap of rock, he knows that said Americans made an assay, but does not know where, of some of the rock, which they called ore, and that, according to the result, it yielded from three to four ounces of silver to the *carga*; that upon this showing they put Mexican operatives to work at sorting out the ore in a large pile, which they distinguished as first-class ore; that they thus got together about sixty *cargas*, which they beneficiated, and which would not pay, as it was publicly said, not even the expense of the labor of the operatives employed in assorting it.

9th. That he does not know whether they covered the *tepetate* which they had heaped up with the ore or not.

10th. That it is not true that the miners stole the ore, since the same is so poor that up to this time the heap left by those of the company still remains without there being any one to take not even a single piece of it, notwithstanding it is left alone, with no one to look out for it.

11th. That D. Juan Castillo, who lives in Durango, is able to give something of information concerning the points upon which the deponent has testified; that this is all that in truth he can say. Whereupon, after this, his declaration had been read to him, he signed and ratified the same with me and the assistant witnesses. I certify. (Signed,) Quiroz de la V., Ygnacio Manjarrez, E. Padilla, Manuel Torrero. San Dimas, Oct. 10th, 1872. Emilio Contreras, being known to me present, and having been sworn to tell the truth in regard to all he might be interrogated as to what he might know, he made answer to the preceding interrogatories, in their respective order, and said, to the—

1st. That his name is as has been stated; unmarried; of age; and a resident of this place.

2d. That during all the time that he has lived in this place he has not changed his residence.

3d. That he is not acquainted with the mine called the Abra, situated in the mineral district of Tayoltita.

Following this, the deponent having manifested that he knew nothing relative to the Abra enterprise, belonging to the Americans in Tayoltita, the preceding interrogatories were read to him in detail, and having become duly informed in regard to all of them, he said in reply to only the—

8th. That he knew, from what he heard publicly stated, that the works begun in Tayoltita by the Americans, were not conducted by them, not even with regard to the most ordinary and practiced customs; that the foregoing is all he knows concerning the interrogatories that have been propounded to him, and after his declaration had been read to him, he certified to its correctness, and signed the same with me and the assistant witnesses. (Signed,) Quiroz de la V., Camilo Contreras, E. Padilla, Manuel Torrero.

SAN DIMAS, *Oct. 11th*, 1872.

Martin Delgado, being present and duly sworn, and being personally known to me, then expressed his willingness to testify to the truth in regard to all he might know and be interrogated, and being questioned upon the preceding interrogatories, he made answer to the—

181 1st. That his name is as has been stated; is unmarried; of age; a merchant by occupation, and a resident of this place, and has been for several years.

2d. That he has not changed his residence since he first moved in this place.

3d. That he is not acquainted with the mine called Abra, in Tayoltita.

Having fully informed him in regard to all the matter contained in all the rest of the said preceding interrogatories, so that he might with more propriety make an answer thereto, but he only made answer to the

8th. That he knows by what has been publicly said, that the Americans, comprising the company in Tayoltita, piled up a large heap of rock which was not ore, and which still remains, because it is worthless, and does not contain silver; that the preceding is what he can truthfully assert.

Whereupon, after it had been read to him, he signed and certified to this, his declaration with me, and the assistants to my office. I certify. (Signed) Cipriano Quiroz de la V., Martin Delgado, E. Padilla, Manuel Torrero.

SAN DIMAS, *October 12th*, 1872.

Miguel Laveaga, being sworn, and promising under oath to tell the truth in regard to what he might know concerning the matters embodied in the preceding interrogatories, then made answer, as follows, to the

1st. That his name is as has been stated, is a widower, of age, a miner by occupation, and has been a resident of this mining district for several years.

2d. That he has made temporary changes in his place of residence.

3d. That he is very well acquainted with the mine called the Abra, in the mineral district of Tayoltita.

4th. That, finding said mine abandoned, it was denounced by some Americans, of whom he does not recollect the names, nor does he remember at what time, and that the same was confirmed to them according to the laws governing such operations.

5th. That he knows, from public talk, that these Americans, then owners of the Abra, bought the Luz, Rosario, and other mines, with the hacienda, from D. Juan Castillo, for the sum of $50,000.

6th. That he does not know who the Americans were that made the contract with Castillo, but he knows that they paid for the property and gave it the name of the "Abra Negociation."

7th. That he is not informed whether this property may have yielded from eighty to a hundred cargas of ore monthly or not; that it is very probable that the Americans practiced deception in regard to this enterprise, those constituting the company in the United States taking part therein, under the belief that said enterprise was of great importance, as it must have been represented to them, the products of which being in reality quite indifferent.

8th. That he knows from what has been generally said that the operations commenced by said Americans in the Abra enterprise were not carried on in the ordinary way, or as is the practice in general; that he also knows, and it is notorious, that they piled up a large lot of *tepetate*, instead of ore, which did not contain either gold or silver, and which is proven by the fact that they assorted a quantity from said ore of the best, beneficiated it, and found that it would not pay for the work of thus assorting it by the laborers; that they afterwards left, leaving the said business in charge of the American or Englishman, D. Santiago Granger, who gave D.
182 Guadalupe Soto permission to beneficiate said ore, or *tepetate*, thus piled up, upon what terms he was not aware, the result of which was that said Soto abandoned the pulp that he had ground from said rock; and that finally that said heap of rock still remains without a single piece of it being touched, as it is worthless.

9th. That he knows nothing of the act in regard to covering the pile of worthless rock with ore.

10th. That he has already said that the ore, or pile of worthless rock aforesaid, did not produce silver; that it is false that, as has been said, the operatives stole the ore, and much less true that the authorities tolerated such robbery.

11th. That D. Juan Castillo is to be found in Durango, who can give some information concerning the matters about which the deponent has testified; and that D. Nicanor Perez is here, who is another that ought to know something also, on account of his having lived in Tayoltita at the time; that the preceding is all that he in truth can say in regard to what has been asked of him. Whereupon this declaration was read to him and signed by him, and acknowledged with me and the assistant witnesses of this, my office. I certify. (Signed) Quiroz de la V, E. Padilla, Manuel Torrero.

In continuation, appeared citizen Arcadio Laveaga, whom I certify I know; he was sworn to speak the truth as to what he might know in regard to the questions put to him, and being questioned after the manner of the foregoing interrogatory, he said, in answer to the first point, that his name is as above stated; a bachelor; of age; a miner by trade, and a resident of this mining district for many years.

To the second point, he replied, that during the time of his stay in this neighborhood, from his early youth, he did not change his residence.

To the third point, he replied, that he does not know the Abra mine, but that he does know that of Tayoltita. Subsequently, the deponent having declared his ignorance of what had occurred at the Abra establishment, to reply to every point contained in the interrogatory, everything was read to him, and having full knowledge of the contents, he said, that he knows nothing from personal observation; that what he knows from hearsay and public rumor is, that from the ores which had been gathered, they selected the best, smelted them, and the result was not good, for which reason they quitted the business; moreover, he knows, in the same way, that it is not true that the company was robbed of ores, and much less that any authority had acquiesced in such robbery; that this is all he can say with truth, which he affirmed.

This deposition having been read to him, he signed it before me, and those in attendance. (Signed,—Cipriano Quiroz, Arcadio Laveaga, A. E. Padilla, A. Manuel Torrera.

Under the same date, having been informed in regard to this matter, that the citizens, Agasito Arnold, Bartolo Rodriguez, and Nepomuceno Manjarrez, can testify knowingly, concerning the points embraced in the foregoing investigation, in con-

sequence of having been at the establishment of the Abra, let them be summoned and examined on the subject.

The judge having charge of these proceedings has so directed, ordered and signed. (Signed,)—Quiroz, A. E. Pardillo, A. Manuel Torrero.

San Dimas, October 13, 1872, appeared, Agasito Arnold, whom I certify I know; he was sworn in due form to tell the trut has to anything he might know about
183 the questions put to him, and being interrogated after the foregoing manner, he said, in reply to the first question, that his name is as above stated; that he is of age, and a bachelor; a native of this mining district.

To the second question, he replied, that he has changed his residence for short periods of time.

In reply to the third, he said, that he does not know the Abra mine, but that he knew the company of Americans in Tayoltita, because he was in their service for four months—until they left.

To the fourth, he replied, that he does not know whether the mine of the Abra was condemned by the Americans, who undertook to work the mines there.

To the fifth, he replied, that he knew from common report that those Americans purchased some mines in Tayoltita, from D. Juan Castillo.

To the sixth he replied, that he knew, through the same channel, that they paid said Castillo for the mines he had sold them, the Americans becoming the proprietors of that establishment, to which they gave the name of the company of the Abra.

To the seventh he replied, that it is possible the mines of that company produced eighty or one hundred loads per month, not of ore, but of worthless rocks, (tepetate,) as it was *notorious* that such was the character of the yield they obtained; that it was also a matter of *public* notoriety, that the profits derived by Castillo from this business, were of small account; that deponent believes what was publicly said, that the Americans deceived themselves in regard to these mines, because, when they sought to make their purchase, they saw at the establishment of Castillo, in Tayoltita, a considerable quantity of silver, which proceeded from the small yield he obtained, and the remainder, from what he had purchased at these mines, and from Gavilanes.

To the eighth, he replied that, in his opinion, the Americans worked at Tayoltita in good order; that he is certain they gathered vast loads of tepetate, (worthless rocks,) which they called ore, classifying it in three qualities, first, second, and third; and he is not aware that this yield was covered by them with a coating of silver ore.

To the ninth, he replied, that he does not know that said yield was thus prepared, in order that some commissioner of the company might see it.

To the tenth, he replied, that it is true said Americans smelted some ore taken from the materials they gathered, and that they found very little silver; that it is not true that they were robbed, and much less that this was done by tolerance of the authorities; that it is true, that the worthless material, (tepetate,) which they excavated, still remains there to this day, and will remain, because it is useless; that this is what he can say with truth, in regard to the questions put to him, which he certified. This deposition, being read to him, he signed it before me and those in attendance. I certify. (Signed) Cipriano Quiros. Agasito Arriola, A. E. Padilla, A. Manuel Torrero.

San Dimas, October 14, 1872. Appeared C. Cepomuceno Manjarres, whom I certify I know; he was sworn to tell the truth as to what he might know in regard to questions put to him; and, being questioned after the manner of the preceding interrogatory, he said, in reply to the first question, that his name is as above stated; that he is of age, and married; a laborer; a native of the State of Sinaloa, and at present a resident of this mining district.

To the third he replied, that he does not know the Abra mine, situated in Tayoltita.

184 To the fourth, he replied, that he does not know whether said mine was condemned by the Americans who worked it last.

To the fifth, he replied, that in the month of June, 1865, he was in Tayoltita, at the establishment of D. Juan Castillo, and on that occasion several Americans came there, who were in treaty with said Castillo for the mines of that district, whose names, according to what I have heard, were, one, General Bartholow; another, Doctor Ardi, a brother of the latter; Mr. Garth, and Mr. Grifis, who were accompanied by many others.

To the sixth, he replied, that in the month of October, of the same year, deponent met said Castillo in Mazatlan, who said to him that the contract which was pending in Tayoltita with said Americans, had already been consummated, the latter paying him fifty thousand dollars for six or seven mines, which he sold to them, with the buildings used for smelting purposes.

To the seventh he replied: that he does not know the quantity of ore which is obtained monthly at that establishment; that Castillo made regular profits, in some of them, and in others he lost money, according to the costs of labor at the mines, and finally, that through economy, he kept up his business for ten years, owing to the excellence of his management, which enabled him to preserve it in good condition; that the Americans may possibly have been led into error in regard to their purchase, in consequence of the excitement which prevailed at the time on the subject of mining.

To the eighth he replied: that in the month of April, 1866, deponent returned once more to Tayoltita, where he remained until the month of February, 1867, a period when the works of the Americans were already established in the following manner: they were building houses on the premises without foundation, of a fragile character; in the mines the work was done in the same way; the miner who directed the works in the mines was an American; he was unacquainted with the business, and received an exorbitant salary. This same individual acted as overseer, and probably from ignorance, or from some other cause, he would not allow, according to common report, the ore to be separated from the worthless rock, (tepatete,) seeing that all that came out of the mine was crushed in the yard, and sent to the smelting houses, of which material there was a yield of more than three thousand loads, and not ten or fourteen thousand, as has been stated; the customary freight of thirty cents paid by the mine to the estate was increased by them to fifty cents; there were forty-seven Americans employed in the buildings, from partners, superintendent, carpenters, blacksmiths, and woodmen, who, besides their enormous wages, amounting from five to twelve dollars, consumed large sums of money for food at the provision store of the establishment.

To the ninth he said, that in the month of May, 1866, an American, called Colonel Lagñel, came there to take charge of the establishment of Tayoltita, and as soon as he had arrived, he forwarded a report to the company in the United States, in which he stated that he had found a great establishment on the margin of a beautiful river, with a large quantity of silver ore in the yard of the buildings; but a few days afterwards, having made himself acquainted with the state of things at the establishment, he saw that it was an accumulation of useless rocks, which were found there, and therefore he directed Bartolo Rodriguez to separate the silver ore from the rest; this having been done by that person, and the people who assisted him, the result was
sixty loads of ore of bad quality, which on being smelted produced very little
185 silver. All the rocks which were thrown aside still remain there to this day, without any portion of the same having been taken away by anybody, because they are useless. That if it has been asserted that they had been robbed of silver ore, it is not true, much less is it true that this was done by permission of the authorities.

That Colonel Lagñel, in view of the bad condition of affairs, reduced the expenses, beginning with the dismissal of the most expensive and useless people, and by substituting Americans; that the Mexican interpreter, D. Isidoro Servantes, having gone away, the colonel and his subordinates had some difficulty with the Mexican laborers, on account of demands on the part of the latter for the settlement of their accounts, which demands were met by denials that anything was due to them; and the claimants, in order to prove the justice of their demands, went in search of Servantes, and the latter having returned to Tayoltita, their accounts were settled, and then they were paid. This is what they call a conspiracy to rob them. That with the above statement, the tenth and eleventh points in the interrogatory are answered; all of which he affirmed. On this deposition being read to him, he signed it before me and those in attendance.

Signed—Quiroz, Juan Cepomuceno Manjarrez, A. E. Pudilla, A. Manuel Torrero.

SAN DIMAS, *October* 16, 1872.

Appeared C. Bartolo Rodriguez, whom I certify I know, being sworn to tell the truth in regard to questions put to him, &c., he replied to the first point, stating that his name is as above stated; that he is of age, and a married man, and a miner, with residence in this jurisdiction.

To the second: that he has not changed his residence.

To the third: that he knows the Abra mine, located at Tayoltita.

To the fourth: that he knows from hearsay that this mine was condemned as being deserted, and in ruins, against some Americans, whose names he does not remember, nor the date when this occurred.

To the fifth: that he knows that the Americans who were in treaty with D. Juan Castillo were not those who condemned the mine aforesaid, but if they were owners of the same, he does not know in what form. The mines contracted for were those named "Luz," "Rosario," "Arrayan," and "Ynocentes."

To the sixth: that these contracting Americans were those who devised and arranged the purchase, paying to Castillo, as he learned, fifty thousand dollars, which were offered for said mines and smelting houses, for which they became the proprietors of everything, giving the establishment the name of the "Abra Company."

To the seventh, that he does not know that this business was productive of eighty or a hundred loads of silver ore; that what he knew is that the mining operations were productive of much rubbish.

To the eighth, that being ore-cleaner at the mines he knows that the work there was conducted in an orderly manner; what occurred is, that by direction of the American miner, George C., who was overseer there, has collected all kinds of rocks, *michi*, *pesanos*, etc., which was sent to the receiving houses, and from that a yield was obtained of considerable amount; that he is not aware that this yield was covered over with true silver ore.

To the ninth, that he is not aware that said yield had been prepared in the above-mentioned manner.

186 To the tenth, that out of this accumulation of rocks, the deponent, by direction of the Colonel, superintendent, selected something like sixty loads, and part of this was smelted, and no silver could be found in it; that he does not know that they were robbed of silver ore, and much less that the authorities allowed it; that to the present day the rocks which deponent cast aside during the selection he made, as well as the ore which was thought to contain silver, and which was smelted, still remains; that the above is the truth in regard to the questions put to him, which he affirmed.

On the above deposition being read to him, he signed it before me, and those in attendance. (Signed,)—Quiroz, Bartolo Rodriguez, A. E. Padilla, A. Manuel Torrero. (Signatures.)

SAN DIMAS, *October* 17, 1872.

Let these proceedings be considered as concluded, and let them be transmitted to the prosecuting attorney of the circuit court. The judge of 1st instance, who subscribes, thus orders it, and signs.—Quiroz, A. E. Padilla, A. Manuel Torrero.

These proceedings were forwarded by this day's mail—October 27, of 1872.

(Signature.)

True copy. Mexico, February 24, 1873.

(Signed,)

JUAN DE D. ARIAS, *Chief Clerk.*

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187 ADDITIONAL REBUTTING TESTIMONY.

UNITED STATES OF AMERICA

BY JOHN A. DIX, GOVERNOR OF THE STATE OF NEW YORK.

It is hereby certified, that George G. Herman was, on the day of the date of the annexed certificate, clerk of the county of Kings, in said State, and duly authorized to grant the same; that the same is in due form, and executed by the proper officer; that the seal affixed to said certificate is the seal of said county; that the signature thereto of the said clerk is in his proper handwriting, and is genuine; and that full faith and credit may and ought to be given to his official acts.

[STATE SEAL OF NEW YORK.]

In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand, at the city of Albany, the fifteenth day of June, in the year of our Lord one thousand eight hundred and seventy-four.

(Signed,) JOHN A. DIX.

Passed the secretary's office the 15th day of June, 1874.

(Signed,) DEIDRICH WILLERS, Jr.,
Secretary of State.

In the matter of the claim of La Abra Silver Mining Company, against the Republic of Mexico.—Rebutting testimony.

Deposition of George C. Collins,

A witness on the part of said La Abra Silver Mining Company, taken before Hon. Calvin E. Pratt, a justice of the supreme court of the State of New York.

George C. Collins being duly sworn according to law, deposes and makes answers to the several interrogatories propounded to him, as follows, to wit:

Question 1. What is your name, age, residence, and occupation?

Answer. My name is George C. Collins; my place of residence is in the city of New York, in the State of New York, and my occupation is that of a wholesale tea merchant, doing business in said city.

Question 2. Have you given any evidence in this cause before; and, if yes, when, and before what court or authority?

Answer. Yes; I have made one deposition in this cause, and did so in the supreme court of the State of New York, before Calvin E. Pratt, a judge of that court, and, as nearly as I can recollect the time, in the fall of 1870.

Question 3. What officer, if any, are you, and have you been of "La Abra Silver Mining Company," the claimant in this cause?

Answer. I am, and have been since October 23d, 1866, the President of said company. Previous to that time I was Vice President of the company.

188 Question 4. The company's office is, and has been kept at what place, and where were its mines, hacienda, and property situate?

Answer. The company's office is, and always has been kept at the said city of New York, and its mines, hacienda, and property were situate at Tayoltita, in the mineral district of San Dimas, in the State of Durango, in Mexico.

Question 5. What was the principal, or chief employee of the company who conducted their mining operations at their mines in Mexico, called?

Answer. Superintendent.

Question 6. How many superintendents have the company had, and what were their names?

Answer. Three only. The first was Thomas J. Bartholow; he was succeeded by Julian A. de Lagnel, who was appointed in March, and reached Mexico in May, 1866, and was superintendent only for a short time; and he, in turn, was succeeded by Charles H. Exall, who continued to be and was such superintendent at the time the company abandoned their said mines and property in March, 1868.

Question 7. State particularly whether James Granger (called also Santiago Granger,) was, or was not, ever a superintendent of said company?

Answer. No, he never was.

Question 8. State whether or not said company, at the time they abandoned their said mines, hacienda, and property, in March, 1868, gave or put, or at any time since have given or put the same, or any of them into the charge, or under the control of any person, or authorized any person to do so, or in any way directed or authorized the same, or any part of them to be used, leased, sold, or otherwise disposed of? State fully and especially with reference to James Granger.

Answer. The said company did not then, nor has it at any time since, placed their said mines, hacienda, and property, or any part of them in charge, or under the control of James Granger, or of any other person, nor authorized him or any person to do so, nor directed or authorized him or any person to sell, lease, use, or in any way to dispose of said mines, hacienda, and property, or any part of them, and if he, or any other person has exercised any charge or control over them, or any disposition thereof, such acts were wholly without any authority from said company, or of any authorized agent or attorney of the company, and have never been ratified or recognized by said company, nor by any authorized agent or attorney of said company.

Question 9. If said Charles H. Exall had attempted to confer upon said Granger, or any other person, any such power of the charge, or control over, or disposition of said mines, hacienda, and property, or any part of the same, what authority had he, if any, from the company, or from any attorney or agent of the company, for so doing?

Answer. None whatever.

Question 10. What has become of said mines, hacienda, and property?

Answer. From copies of Mexican records shown me, it appears that the company's mine "Rosario" was denounced by said James Granger, April 8th, 1871, and that he and a Mexican, named Francisco Torres, were put in possession of it by the legal authorities of the State of Durango, in Mexico, August 11, 1871, and I am informed and believe that the stamp mill and mining tools of said company have been all sold and leased out by the Mexican authorities of that district, and the same partially or 189 wholly worn out by use at the works of Mexican miners; and also that the other mines, and the hacienda, and reduction works of La Abra Company have, since

August, 1872, been denounced, and legal possession given of them by the Mexican authorities at Durango to the parties denouncing, and that the same are being worked by Mexicans successfully.

Question 11. State whether or not any person has accounted to said company for their said mines, hacienda, and property abandoned in March, 1868, or for any part thereof, subsequent to said abandonment, or has paid for the same, or paid anything on account of the same, or any part thereof?

Answer. No; no person has so accounted, or paid anything for, or on account of the same, or any part thereof.

Question 12. Where is said Superintendent Julian A. de Laguel, and what reason, if any, exists for not having his deposition taken in this cause?

Answer. The company has made diligent inquiry to find him, for the purpose of obtaining his deposition as evidence in this cause, but they were unable to learn where he resided, or could be found, and do not know whether he is now living or not. The company was informed and believe that before the filing of the memorial in this cause, he went to the State of Florida, and afterward to South America, and then to China, but could get no definite information as to his whereabouts; for these reasons, his evidence could not be, and has not been, obtained on behalf of the claimant in this cause.

Question 13. Jesus Torres and Francisco Acosta, in their testimony given at Durango, in this cause, before Geronimo Lido, juez de paz, severally say, in terms or substance, that the company sent a commissioner or agent to Mexico to examine into the enterprise. Say whether this statement is true or not?

Answer. It is not true. Before the company was formed, Thomas J. Bartholow and David J. Garth, on behalf of themselves and the other gentlemen who subsequently formed the company, went to Mexico to examine and purchase the mines, but the company never sent out any commissioner, and had no occasion to do so. It had full confidence in its superintendents.

Question 14. Say whether or not said Bartholow and Garth made any false report to, or practiced any deception with regard to said mines, upon the gentlemen who formed said company, or upon said company, or its stockholders?

Answer. No; on the contrary, at the organization of the company they became, and ever since have been, among the largest of its stockholders, and have always warmly supported it, and readily advanced it money when required, and it is now largely indebted to Mr. Garth therefor.

Question 15. Are you the agent of said company, or of any person interested in the claim of said company against Mexico.

Answer. No; unless the fact that I am the president of said company can be considered as making me an agent for said company and its stockholders.

Question 16. Have you any interest, direct, contingent, or otherwise, in the claim of said company against Mexico?

Answer. I am a stockholder of said company, and have lent it sundry sums of money, which remain unpaid, nor have I been paid anything for my services as president of the company, as I particularly stated in my previous deposition. Such interest in said claim as grows out of those facts, I have, but I have no other.

GEO. C. COLLINS.

190 Subscribed and sworn to before me, this twenty-third day of May, 1874.

C. E. PRATT, *J. S. C.*

UNITED STATES OF AMERICA, STATE OF NEW YORK,
County of Kings, City of Brooklyn, ss:

I, Calvin E. Pratt, a Justice of the supreme court of the State of New York, do hereby certify, that George C. Collins, whose deposition is herein above written, attended before me on the twenty-third day of May, 1874, at the county court house in the city of Brooklyn, in said county of Kings, and was publicly and duly sworn, according to the laws of the United States of America, and of the State of New York, to tell the truth, the whole truth, and nothing but the truth, in the above-entitled matter, and thereupon he deposed and testified as hereinbefore set forth, that said deposition was carefully read to said George C. Collins by me, and that he thereupon signed the same in my presence.

I do further certify that said deposition was taken by me in the city of Brooklyn, in the county of Kings, and State of New York, in the United States of America; that I am competent to take depositions by the laws of said State, and of the United States; that I have no interest in the claim to which the testimony of said George C. Collins relates, and that I am not the agent or attorney of said La Abra Silver Mining Company, claimants in the above-entitled cause, nor of any person having such interest.

I do further certify that said deposition was reduced to writing by Henry E. Med-

calf, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify that I know the said George C. Collins, the above-named affiant, as a man of good character for truth and veracity, and I hereby certify to the credibility of said George C. Collins, and that his deposition is entitled to full faith and credit.

Dated May 23d, 1874.

C. E. PRATT, *J. S. C.*

STATE OF NEW YORK, CITY OF BROOKLYN,
County of Kings, ss:

I, George G. Herman, clerk of the county of Kings, and clerk of the supreme court of the State of New York, in and for said county of Kings, (said court being a court of record,) do hereby certify that Calvin E. Pratt, whose name is subscribed to the foregoing deposition and certificate, and thereon severally written, was, at the time of taking such proof or deposition, and signing said certificate, a justice of the said supreme court of the State of New York, and has been continuously such justice since January 1st, A. D. 1870, and authorized to take such depositions and sign said certificate, and his acts as such justice are entitled to full faith and credit, and that said signatures of such justice are genuine.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said county and court, this twenty-fifth day of May, A. D. 1874.

[SEAL, KING'S COUNTY.] GEORGE G. HERMAN, *Clerk.*

191 *Rebutting evidence In re La Abra Silver Mining Company versus the Republic of Mexico. Deposition of Charles H. Exallbe fore th eAmerican and Mexican Claims Commission, Washington, D. C.*

UNITED STATES OF AMERICA, SOUTHERN DISTRICT AND STATE OF NEW YORK,
Office of United States Commissioner, City and County of New York, ss:

2 o'clock P. M., June 11, 1874, before me, Richard E. Stilwell, United States commissioner for the southern district of New York, personally appeared Charles H. Exall, who is known to me as the person here represented, and who having been introduced as a witness in behalf of claimant, and by me lawfully sworn to state the truth in answer to interrogatories suggested by counsel for claimant, and propounded by me, relating to the statements of witnesses for the defense in this cause, and confined solely to the rebuttal of the same, deposes and testifies as follows:

Question 1. What is your name, residence, and occupation?

Answer. My name is Charles H. Exall; my residence the city of New York, in the State of New York; and my occupation, cashier of the stock broker's establishment and banking-house of Washburne and Thayer, No. 62 Broadway, in said city.

Question 2. Have you heretofore given any evidence in this cause; and if yes, state how, where, when, and before what court or authority?

Answer. I have. I was summoned in behalf of La Abra Silver Mining Company, the claimant, to testify as a witness in this cause, and pursuant to the summons, I appeared in the supreme court of the State of New York, at the court-house in the city of New York, Judge Barnard presiding, and gave my evidence before him by answers to questions propounded to me, and in form of a deposition signed by me, about December, 1869.

Question 3. From about September 11, 1866, to about March 20, 1868, what business were you engaged in, and where and what position, if any, did you hold?

Answer. I was superintendent for said company, of their mines, hacienda works, and property at Tayoltita, in the mineral district of San Dimas, in the State of Durango, in Mexico, as I testified in my previous deposition.

Question 4. Who immediately preceded you as superintendent of said company's mines, hacienda, works, and property at Tayoltita, aforesaid, and what position, if any, did you hold under him, and where is he now?

Answer. Colonel Julian A. De Lagñel preceded me as superintendent. I was his assistant superintendent. I can not say where he is, other than this: When I returned from Mexico to the city of New York, in the spring of 1868, I saw him in this city, which was then his headquarters. He was unmarried, I believe, and had no fixed or permanent residence. Soon afterwards he engaged in business which took him to the State of Florida, and I saw no more of him. I have been reliably informed and believe that he afterwards went to South America, and thence to China, and has not returned to this country.

Question 5. By what names were said De Lagñel and yourself, when such superintendents, respectively known and called at San Dimas and Tayoltita, at said company's mines and works, by Mexicans of that district, and by Mexican employees of said company?

Answer. Said De Lagñel was always called and known as "Colonel," and I as "Don Carlos," and sometimes as "Carlos Mudo," which, in English, means "Speechless," or "Silent Charles."

192 Question 6. Have you read the translations of the alleged defensive testimony in this cause, purporting to have been given at San Dimas, before Gil Ruis, by Patricio Camacho, January 16th; Bartolo Rodriguez, January 19th; Ramon Augirre, January 26th; Aquilino Calderon, January 31st; Refugio Fonsica, February 3d; and Ygnacio Manjarrez, February 19th, all in the year 1871; and before Judge Cipriano Quiroz, by Santiago Granger, August 23d and October 6th, 1871; and again, the same witness, July 23d and 25th, 1872; Maria Cecilia Jimenez, August 24th, 1871; and again, same witness, July 15th, 1872; Bartolo Rodriguez, again, September 24th, 1871; and again same witness, July 25th and October 16th, 1872; Refugio Fonsica, again, September 24th, 1871; and same witness, third time, July 22, 1872; Andres Serrano, Benigno Galvan, and Petronilo Santos, September 25th, 1871; Bernardino Aguirre, Leandro Molina, Pio Quinto Nuñez, and Julian Romero, September 26th, 1871; N. A. Sloan, October 9th, 1871; and Ygnacio Manjarrez, again, October 9th, 1871, and October 9th, 1872; Guadalupe Soto, July 24th, and again August 6th, 1872; Victoriano Sandoval, July 25th, 1872; Aquilino Calderon, again, July 29, 1872; Pio Garrola, July 29, 1872; Martin Delgado, July 29th, and again, October 11, 1872; Emilio Contreras, October 10, 1872; Miguel Laveaga and Arcadia Laveaga, October 12, 1872; Agacito Arriola, October 13th, 1872; and Cepomuceno Manjarrez, October 14th, 1872; and again, same witness, given at Durango, before Geronimo Lido, Juez de Paz, and by Jesus Torrez and Francisco Acosta, July 31, 1872—embracing all the depositions for defence, copies of which are now handed you, and left with you for reference, as questions arise and are propounded to you? And if yea, state whether you have read them, and each of them carefully, or not, and whether you know their contents.

Answer. Yes; I have read them all through, very carefully, and I know and am familiar with their contents.

Question 7. Whenever in said defensive testimony the superintendent is spoken of as "Colonel," or as "Carlos," or "Carlos Mudo," who is the person referred to by such designations respectively?

Answer. When the designation "Colonel" is used, said superintendent, De Lagñel, is the person meant and referred to. I was never so designated; and when the designation is "Carlos," or "Carlos Mudo," I am the person meant and referred to.

Question 8. What have you to say as to the truth or falsity of so much of said defensive testimony as states, in terms or substance, that the superintendents of said company, and those who directed its work at the mines, were ignorant of mining and of their business; that the work done by or under them was improperly done; that the wages paid and expenditures made were extravagant; and that the mines were not worked in accordance with the usages and laws of the country? State fully what was the fitness and qualifications of Colonel De Lagñel and yourself for the office of superintendent, and of the chief subordinates for their positions, and in what manner the work was done?

Answer. All the testimony, in terms or substance, to such effect, is untrue. Previous to becoming such superintendent, both Colonel De Lagñel and myself had each of us several years experience in silver mining, and thoroughly understood the business practically; each of us also understood it scientifically, having studied the art

193 of all kinds of silver and gold mining. The work done by both DeLagñel and myself was done properly, and strictly in accordance with Mexican law and the usages of the mining district, in which the company's mines and works were situate, and the expenditures were judiciously and economically made. Those of the employees who had charge of workmen, or of any special work, were always selected by said De Lagñel, or myself, on account of their experience and ability in said business, and said company paid fair, but not extravagant wages; we paid only the current wages of the country, and made only such discriminations as expertness, industry, and ability justified.

Question 9. What have you to say as to the truth or falsity of those parts of said defensive testimony wherein it is stated, in terms or substance, that the company rendered the hacienda unserviceable for beneficiating purposes, by removing the fixtures therefrom, with the idea of rendering it better with the machinery they erected, which was "of no account," and that by destroying the hacienda for beneficiating ores, according to Mexican custom, they brought ruin upon themselves? State, particularly, whether said hacienda was destroyed, or not, and what was the quality and kind of the old machinery and fixtures removed, and of the new machinery, stamp-mill, and fixtures introduced and erected by said company, and whether the introduction and erection of the new, in the place and stead of the old, was beneficial or injurious to said hacienda and reduction works, and whether the same rendered them more or less serviceable, and the mines and entire property more or less valuable; and

also state what were the opportunities and ability to form a correct opinion on the subject, of those Mexican witnesses who testify with regard to it?

Answer. None of the testimony which in terms or substance is to such effect, is true. Said hacienda was not destroyed or taken down at all, but was enlarged and improved. The machinery and fixtures removed were of the simplest kind, old fashioned, much worn and completely out of use, except by Mexicans, who work mines and crush ores on a small scale by arrastrars, or the old "Patio process," and the reduction and beneficiation of ores by them was slow and imperfect, and their working capacity very limited, and were inadequate for the work prosecuted on the scale contemplated by this company. The stamp-mill machinery, and appliances erected there, to supercede the old, were new, of the very best quality and most approved kind, and were highly beneficial to, and very greatly enhanced the value of said mines and property, and increased the effectiveness and working capacity of all the works of the company for crushing ores, more than twenty fold, and for the beneficiation of ores, more than seven fold. The stamp-mill, machinery, and fixtures, and the new hacienda adjoining the old one, erected by said company, and the mill-house, races, and other outer buildings and works necessary to their use, were of the best material, and substantially built, and upon good foundation, and just completed and perfected and in readiness for full operation at the time said company was forced to abandon the same, and their mines and property in March, 1868; and the alleged witnesses who speak upon the subject, or are here reported as expressing opinions upon the use and effectiveness of this stamp-mill and modern machinery, could not possibly form a correct opinion as to the utility or effectiveness of said mill and machinery, even had they ever seen the same. But all of said witnesses, excepting only five of their number who had worked for the company, resided at San Dimas, Ventanas, Durango, and at other places, fifteen miles distant from the company's works, and none of the San
194 Dimas witnesses were at the hacienda and stamp-mill, nor ever visited the patios, in the day time, while I was superintendent, unless they were of the parties spoken of by me heretofore, who came openly armed and with impunity carried off all the best ores of the company, and threatened personal violence if I attempted to stop them, or to protect the company's interest. Those Mexican laborers had no mechanical idea of the mill or machinery, which was new to them, and they were therefore not qualified, and in no position to form a correct, or even an intelligent opinion on the subject, and those alleged witnesses who really had worked for the company, were only common day laborers, and had no knowledge of mining or mining works, except what is derived from the performance of the commonest labors, such as the blasting and taking out of rocks. They were wholly ignorant of modern mills and machinery, and, in fact, of any process for the crushing and beneficiation of ores, other than by the common Mexican patio process, which is out of use and entirely unsuited to large operations, like those of said Abra Company, at Tayoltita.

Question 10. Do you know James, or Santiago Granger, named in said defensive testimony; and, if yea, who and what was he? Was he ever in the employ of said company, and in what capacity and for how long, and what have you to say as to that part of the testimony which purports to have been given by him before Judge Cipriano Quiroz, at San Dimas, July 25, 1872, in answer to a question as to his position in La Abra establishment, and which is stated in the translation you have in your hand, as follows: "At first I was a dependent, afterwards I became superintendent, and remained in charge as representative of Carlos H. Exall."

Answer. Yes; I know said Granger well; he is an English subject of much talent, for whom I entertained respect and friendship. When I was superintendent, I employed him as book-keeper for me, or for the company under me, and also as clerk, to assist me generally in whatever I had for him to do, and he acted in those capacities, and in no other, and his employment by, and all business relations with me, and by and with said company through me, ceased and terminated at the time I was compelled to abandon the company's mines, hacienda, and property, as I have stated, about March 20, 1868. He never was, at any time, superintendent or director of said establishment, nor did he remain in charge as my representative of said company, or otherwise. I was the last superintendent of said company, and he was for a time book-keeper and clerk under me, as I have just stated, and never had any charge or control of the establishment in any respect. There is not one word of truth in that part of what purports to be his testimony, to which my attention is particularly called by this question, as to his position, except that he was a "dependent," acting under me, as I have stated, and, from my knowledge of him, I am constrained to believe that he never made such a statement under oath; and that either his testimony is mistranslated, or else that his testimony has been wrongly taken down by said magistrate.

Question 11. If said James Granger, or any other person, at or subsequent to your abandonment of said mines, hacienda, and property in March, 1868, has taken charge of, or exercised any act of control over, or of sale or disposition of said mines, hacienda, or property, or of any part of it, state whether any power or authority to do

so was conferred by you upon such person, in any way, and in what way; and what, if any, was your power or authority from said company for so doing, on your part?

196 Answer. I never had any such power or authority from said company, and never exercised, or assumed to exercise any such power or authority. I did not leave said mines, hacienda, or property in charge of said Granger, or any other person, nor did I give any charge, control, power, or authority of or over the same, or any part of the same, to him, or any one else, and if he, or any other person has taken charge or control of said mines, hacienda, and property, or of any of it, or has sold, used, or in any way disposed of any of it, each of such acts was without any power or authority, or right whatever to do so, so far as any act by me or for me, or on my part, as superintendent or otherwise, is concerned. The fact is, I left there so hurriedly and secretly, with my American friends, to save my life, as I believed, and still believe, that I had no time, even if I had possessed the right and wished to make such arrangements; besides, I was satisfied that the company's interests there could never be preserved, under any possible management, as the district authorities had determined to expel that company from the mines, because, only the day before I escaped, I was warned by the prefect, Macario Olvera, in person, that it would be better for me to abandon said works, and leave the country before any personal harm came to me, as he could not protect the company, he said, against public sentiment, as the native residents of that district were determined not to remain without work any longer, but to take the mines and work them on their own account. I felt, from this and other demonstrations and warnings, that my American employees and myself were in immediate danger, and I left there hurriedly, as I have said, for the warning of said prefect foreshadowed another attack on the hacienda, and probably that night.

Question 12. Do you know Guadalupe Soto, of Tayoltita, and, if yea, what official position, if any, did he occupy under the Mexican Government, and under what Government did said Soto officiate, if any, while you were at Tayoltita, and were said superintendent?

Answer. I know him well, and he was at the time referred to in the question, local judge of Tayoltita, and he held his official position under the Mexican Republic, of which Benito Juarez was President.

Question 13. Refer to the translation of the testimony purporting to have been given by said Soto, before said Judge Cipriano Quiroz, at San Dimas, July 24, 1872, and also to the papers purporting to be copies of an agreement, or lease, made between you and said Soto, and a renewal thereof by said James Granger, and produced before said judge, July 26, 1872, in which he also attributes the disturbances to a want of a contract with the workmen; and state in what particular, if in any, said testimony is correct, or incorrect, or untrue, and explain fully about the said agreement and the Guadalupe estate referred to, and what it had to do, if anything, with La Abra Company's mines, hacienda, and works. State also if any ores were beneficiated there by the company, or by you for the company to protect its interests?

Answer. It is not true that the communications referred to by said Soto, in his said testimony, were made because of any disturbance among the people, arising "in consequence of a want of a contract for working the mines," between the superintendent and the workmen, as all workmen and employees of the company worked under an express contract, either written or verbal, with the superintendent. It is also untrue that said Soto had never taken "even a solitary stone belonging to said company," for I have seen Mexicans whom I knew to be in his employ, taking ores from

196 the patios of the company's hacienda to Judge Soto's house, who defied my authority, and whom I did not dare to stop, as they were armed; and I afterwards saw piles of very rich ores in said Soto's house, which I knew had been stolen from said patios of the company, and which had been taken out of El Cristo mine by the company and packed down to said patios, or within the enclosure of the company's hacienda, San Nicolas, or court-yard of the same, the ores of that mine being of such a peculiar character and color that they were unmistakable, and could be at once recognized and identified by any one at all familiar with them. The so-called "Guadalupe estate" is a small piece of level land, about fifty yards square, upon which there was an old, and, to La Abra Company, useless hacienda. It is located not less than half a mile from said company's hacienda, "San Nicolas," and reduction works, and although it was owned by La Abra Company, it never was used by the company for any purpose, and was not included as a part of "La Abra mines and property," and had no connection with them or said hacienda, San Nicolas. Said Soto wished this so-called Guadalupe estate, and with the view of trying to conciliate him, and through him also Macario Olvera, who, it was said, was Judge Soto's son-in-law, and who was at that time prefect and chief authority of San Dimas district, I executed to said Soto said agreement of February 7, 1868, whereby I gave him permission to use the old Guadalupe hacienda for six months, rent free, said Soto intending, as he said, to erect on the premises a stone mill, and to use the same for

reducing his own ores, he claiming to own some mines in that neighborhood, but two or three miles distant. I gave him no other permission than that specified in said agreement.

The instrument made, or said to have been made by James Granger, attempting to extend or renew said lease, seems to have been made and dated long after the company had abandoned all its property there, and was made, if made at all, by Granger, without any power of authority whatever; as I have already stated, Granger had no control over La Abra establishment, or any of the company's property, conferred by me, or by the company, or any authorized agent of the company. It is equally untrue that on said Guadalupe estate the company was working successfully the ore from the Abra mine, as he states, or that the work done there was done by laborers working by permission of the superintendent, in order that they might be protected, or otherwise. The ores which the company took out were taken almost wholly from their mines, "Rosario," "La Luz," and "El Cristo," and none of any considerable amount was taken from their mine "Abra," which was only being opened by the company when driven away. The company did not, directly nor indirectly, or by laborers working by their permission, or otherwise, take or work, or authorize to be taken or worked there, any of their ores, or carry on any business whatever, on said "Guadalupe estate," which was also separate and distinct from another mining establishment of the same name in that neighborhood, called "Nuestra Señora de Guadalupe Silver Mining Company."

Question 14. Say whether or not permission was given to said Soto, by you or said Superintendent De Lagñel, or by any representatives of La Abra Company, to take ores from any of the mines owned or worked by said company, and reduce them at said Guadalupe hacienda, or elsewhere?

Answer. No; no such permission was ever granted said Soto, by said De Lagñel or myself, nor by any person representing said company, during the time De Lagñel and myself had charge of said works.

197 Question 15. What were the complaints of the laborers, and the disturbances by them and their refusal to work, and the failure, if any, of the company to keep its contracts with the workmen, mentioned in said defensive testimony, purporting to have been given by Sandoval and Aquilano Calderon? Explain fully all about these matters.

Answer. There was no such failure to comply with our contracts with the laborers. That is all a hatched-up story—a mere excuse for driving us away, which has no foundation in truth. After the company commenced the work of building the mill-house and out buildings, and of putting up the new additions to the hacienda and reduction works, large numbers of Mexicans came there, many of them mechanics from the towns below, and from various quarters, seeking work from the company, and large numbers of mechanics and miners were employed by De Lagñel and myself on said works, and Tayoltita increased very much in population, there being at one time more than a thousand laborers in and about Tayoltita. The best of them, mechanics and miners, who had experience in the kind of business in which we employed them, were set to work, and we had no trouble with them; but a large majority of said laborers that had flocked together at Tayoltita from other districts, were of the poorest and most illiterate class, and I have reason to believe they were sent there for no good or lawful purpose, for I discovered that those who were not employed by the company soon became intimate with the local authorities there, who were in favor of driving all Americans out of the mines. They came of their own accord—the company did not invite them there. I asked some of these men why they came there in such numbers, and they said they had heard that La Abra Company was rich, and paying large wages, which I denied. I employed as many of these men as I had work for, in blasting, digging, or excavating, and other common labor, but as many of them were not miners nor mechanics, it was impossible for the company to employ all of them, either with profit or reason. The work upon the mill, mill-races, hacienda, shops, houses for the operatives, and other such work which the company was doing, progressed, and some of these structures being completed, and others nearly so, many of the men whom I had employed about that work were no longer necessary, as they were not practical miners, and they were paid off in full and discharged, and when their money was exhausted, they asked for more work, but I could not properly give them employment, for I had nothing for them to do, having then, without them, some one hundred to a hundred and fifty employees at the mines and hacienda. They were dissatisfied, or pretended to be, at my refusal, and were readily joined by those mischievous Mexicans and politicians still remaining about Tayoltita; and the said prefect, or jefe, and local judge, made complaints, because these ignorant and turbulent characters were not employed, and they became very hostile.

Said Judge Guadalupe Soto, and the prefect, Marcus Mora, encouraged this spirit among the men, and incited them to riot by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently

for weeks at a time, paralysing the works, and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion, Aquilino Calderon at-
198 tempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled, by said judge and prefect, to quit the company's service, and they, the said Prefect Mora and Judge Soto infused the same hostile feeling into the whole mass of workmen, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men, and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders were mild compared with verbal orders given me by said officials, from time to time, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable. The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters continued to harass the company in its operations, and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so, that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer. They were armed with pistols and machetes but as I had been previously warned of it by said friendly muleteer, I was in some measure prepared for the attack, and after they discovered my position and strength, they retired for that night. Soto and Olvera both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, that they would let the working people drive the company out of that district and give them the mines to work as they pleased. Their verbal orders to me were much more pointed, emphatic, and hostile, than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing.

I never had any difficulty with the laborers on account, or growing out of any contract with them, and only for the selfishness, jealousy, and interference of said authorities, I think I could have gotten along with the people, and remained at said works. Said workmen were paid the current wages of the country, and were always fully paid according to the contract; the pretense to the contrary was merely a pretext on the part of the officials I have named, to evince their hatred against this company, and their hostility to its existence in Mexico. I would not employ men whom the company did not invite to Tayoltita, and for whom the company had no work, and to employ whom would have been an injury to the company. Said Soto, Mora, and Olvera attempted to make me employ everybody who would work, or employ no one, which they knew would ruin the company, and they themselves incited and brought about those very disturbances, and they are the same complaints, disturbances, and refusal of the men to work, which are mentioned in said defensive testimony; any other version of the matter, contrary to what I have just given, is untrue.

Question 16. With regard to the forced loan made by the company to Jesus Valdespino, for the support of his troops, state whether or not the whole or any of it was paid by you; if not, by whom was it paid, and when?

199 Answer. It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel De Lagñel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel De Lagñel, and, to the best of my recollection, the whole amount, $1,200, was required of and paid by said De Lagñel. There was a small loan, or "prestamo," previously required by Valdespino, of, I think, $500, and that was paid by contribution, and with much trouble, the company paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made, and failed, and Valdespino then fell back upon the company, as being most able to pay, and completed the payment. The Mexican witnesses must refer to the small loan, if they contributed anything to Valdespino, which I never heard of before. Those laborers were too poor to contribute, and I don't believe the story.

Question 17. Under what authority, or government, was said Jesus Valdespino acting, and what was his office when he forced said loan, or what part of such impositions were by the Juarez government, and what part by the French or Imperialists?

Answer. He was an officer—a colonel—in the regular army of Mexico, under the government of President Juarez. The French, or Imperial Government never extended over the district of San Dimas, nor any part of it; it did not reach so high up

the country from Mazatlan as that. Their occupation on the Pacific slope was confined mainly to the district of Mazatlan. All the injuries inflicted upon the company by the French and Imperialists, were done in the district of Mazatlan, Sinaloa, where the French had control for a time, and upon some of our supply trains moving up from the city of Mazatlan, and consisted in seizing from some of our trains sundry small stores, amounting in the whole, in value, to about $500, and a number of our mule trains were captured, but returned to the company by the French, when they found out we were not Mexicans, although they accused us of Mexican sympathies. About seven or eight of our saddle mules, of the total value of about one thousand dollars, were kept by the French soldiers, and never returned to the company. Fifteen hundred dollars would cover all the losses sustained by the company by the acts of the French or Imperialists. They sometimes insulted and annoyed us, because we sympathized with republicanism there, but our worst enemies were the Republican authorities themselves.

Question 18. State whether or not your arrest by Judge Perez was in consequence of any misdemeanor committed by you?

Answer. It was not; I had done no unlawful act, and none was charged against me. I told Judge Perez, politely, that if he had some business with me that I would see him in the office, and his pretended offense was all previously arranged, as I was subsequently informed, to give him a pretext for locking me up, and paralyzing the works of the company. I gave him no reason or cause for arresting me.

Question 19. Say whether or not any of the mules which were stolen from the company were ever paid for, or returned to the company, by order of Camilo Perez, or any other person?

Answer. No; none were ever returned or paid for, neither by Perez nor by any other person.

Question 20. State whether or not any of the company's mules were sold by the miners of La Abra establishment, or by you, or any other authorized person, to Pioquinto Nuñez, Calixto Loretto, or any one else.

200 Answer. No, not at all; no such thing ever occurred. All the mules of the company, except those which had been captured by the military on the road, and stolen from the hacienda, and except the saddle mules upon which some American employees and myself escaped to Mazatlan, and the one ridden by my servant, were abandoned at the hacienda, with all the other property of the company, and if any of the mules have been sold to said Nuñez, Loretto, or any other person, the sale has been made since said abandonment of the mules so stolen or abandoned, and by persons who had no right or authority to make the sale.

Question 21. What number of mules, in all, were captured or taken from the company, and retained or appropriated by the military of the Republic, and what number stolen from the hacienda, all before the breaking up and forced abandonment spoken of by you?

Answer. Under Colonel de Lagñel, and my own superintendence, about one hundred and twenty-five were so captured on the road from Mazatlan, and about twenty stolen from the hacienda. I do not know how many were so taken from the company under General Thomas J. Bartholow's superintendence, but I have understood from him that a number of trains were so captured by the said military.

Question 22. What were the opportunities, if any, of Refugio Fonseca, and Victoriano Sandoval, to personally know about the business and condition of the Abra Company, and other matters about which they are reported to have testified, in the copy of defensive testimony which you hold in your hand?

Answer. They were common laborers, up in the mines, three miles distant, only coming to the hacienda once a week, and it was impossible that they should have any personal knowledge of the business of the company, and the other matters as to which they apparently testify, or which is here reported as their testimony.

Question 23. State whether or not a large pile of "tepetate," or "worthless rock," was made in the patio of the company's hacienda, and called ore, and then was covered over with a layer of real ore, in order that it might be seen by a commissioner, who came from the United States for the purpose of examining into the enterprise on behalf of the company, and whether or not any such pile was made there for the purpose of deceiving the capitalists in the United States, or for any other purpose, or existed while you were at Tayoltita, or whether any such commissioner or agent came there? Refer to the letter of Jesus Torres, in the defensive testimony.

Answer. No commissioner or agent came from the United States, or from said company, for the purpose of examining into said enterprise on behalf of said company, while said De Lagñel, or myself was superintendent, nor was any pile of "tepetate" covered over with ore, or without being covered over with ore, made or existed there, and if any such pile of "tepetate" was there when said letter of Torres' purports to have been written, it has been made there since said abandonment, and must have been so made for some unjust and unworthy purpose. I can say positively that said letter contains a tissue of falsehoods.

Question 24. Is it true or false that Colonel De Lagñel, when he became superintendent, found a large quantity of rock taken from the mines, piled up in the
201 patio, and ordered Bartelo Rodriguez to assort it, who did so, selecting sixty cargas of the best, which De Lagñel smelted or beneficiated, and it proved worthless; and if it be not true, state why not?

Answer. It is untrue; there was no such important mining of ores until sometime after De Lagñel became superintendent, and no such pile of "tepetate" or "rock" existed there when he first became superintendent, nor while I was there, and no such circumstance as that named in the question ever occurred. Prior to his becoming superintendent, and for some time afterward, the work principally done, so far as the mines were concerned, was in opening them and in cleaning them out, as some of them had fallen in and required great labor and time, and heavy expenditures of money to re-open them. A few of the ores which were mined while he was superintendent, were beneficiated by him, merely as a test of their quality, and was done, necessarily, in the old fashioned way, as our mill and reduction works were not up then; and subsequently I beneficiated some few tons, and they proved to be of the richness stated in my previous deposition; that was early in 1868. I beneficiated, in all, about twenty tons, the most of it as a trial to our new machinery, which worked admirably, and the proceeds, about $17,000, was put into the general fund of the company and used in said works, immediately before we were compelled to leave, and it was lost with all the other expenditures there. This was all the beneficiation done by or under De Lagñel or myself. The mill, mill-house, and other works for beneficiation by the company, were not completed until long after De Lagñel ceased to be superintendent and left the Mexican Republic, and as for smelting, there was not a smelting establishment in that district that I ever saw or heard of. The silver was extracted from the rock, universally by "amalgamation" there, and not by heat or smelting. Said Rodriguez was a common laborer, and was discharged by me for dishonesty, and, of course, he became very hostile, and was one of those who made the night attack on the hacienda, with other armed men, and amongst that number of violent characters, I recognize the names of no less than four of these Mexican witnesses reported here by Cipriano Quiroz, viz: Bartolo Rodriguez, Guadalupe Soto, Cepomucino Manjarrez, and Victoriano Sandoval.

Question 25. State whether it is true or false that the best of the ores got out by the company were beneficiated, and whether it is true or false that you took the silver to the city of Durango and gambled it away, or paid a gambling debt with it, and whether it is true or false that the material taken by the company from the mines and piled up in the patio of the hacienda, was "tepetate," or good silver ore? Explain fully as to all those matters, particularly as to the course taken by the superintendent in the selection of the material so taken out from the mines and piled up in the patios, and also whether it is or not true, as stated in said defensive testimony, that you abandoned the company's works and mines, in 1868, because you could find no silver in the ores, and they would not pay for reducing them, and not because the authorities interfered with the working of them?

Answer. No; all the matters and things stated in the question are without foundation in truth. There is not one word of truth in the statement that the best of the ores taken out by the company were beneficiated. Colonel De Lagñel, while he was superintendent, beneficiated a few ores, merely as tests, as I have already stated, and subsequently, while I was superintendent, I from time to time beneficiated for the same purpose, a few of the ores, or average samples, in order that I might be doubly sure of their qual-
202 ity, in which I was at times assisted by Dr. Elder, a practical chemist and assayer, and such reduction found them as rich as I stated in my previous deposition. It was only just before said abandonment that the company's mill, machinery, and other works were completed and in readiness for active and perfect crushing and beneficiation of ores, and until then the principal energies of the company had been directed to the erection of those works, and to getting out ores, so as to commence their reduction on a large scale. I then beneficiated some twenty tons, to try the machinery, as I have already stated. When those works were completed, and we were ready to realize, the facts were widely circulated by Mexicans, and I was soon thereafter notified by said prefect, Olvera, that the company would be no longer tolerated there, and that he could not protect the company if I attempted to remain, or if the work should continue, and he advised me to go quickly, to avoid personal violence, which I did do, believing that he knew the plans, and the determination of the people and the authorities to drive us out, in some way; and the manner of doing it being strongly hinted at in his official warning, I left and abandoned everything the next day, or night. It is simply a *lie*, that I took the silver to Durango and gambled it away, or any part of the same, or paid a gambling debt there, or elsewhere, as I made no gambling debts. I never bet or gambled away a dollar of the company's money or bullion in my life, neither in Durango nor anywhere else, and nobody ever accused me of gambling who knew me personally. This false charge, which I am forced to believe is the invention, not of any poor Mexican workman, but of inter-

ested and prejudiced parties who report this falsehood, meri ts only my indignation and contempt. It was known publicly that Cipriano Quiroz, before whom this slander is said to have been stated, was one of the bitterest foes of all Americans in that district, and in connection with the Laveagas—Miguel and Arcadio, father and son—Marcus Mora, Judge Guadalupe Soto, Marcus Olvera, the prefect, and some Federal officials at Durango, was notoriously at the bottom of the conspiracy, and the expulsion of the company. I never had any association, of any kind, with gamblers, knowing them to be so, nor with the so-called witness, Refugio Fonséca, who appears to have so testified. He never was in Durango with me, and if I had done as stated in this deposition, he could not have known it; nor does it even appear by this reported statement, which I hold in my hand, that he was in Durango at the time stated nor that he witnessed what he is falsely reported in this deposition to have stated. I never made any improper disposition of the company's money or property, neither in Durango or elsewhere, and I never associated with gamblers, or other unworthy men, knowing them to be so, in Mexico nor anywhere else.

The ores were taken out of the company's mines, mainly while I was superintendent, but a small part of them were taken out while I was assistant superintendent to Colonel De Lagñel. They were taken principally from the company's mines, "Rozario," "La Luz," and "El Cristo," and were broken in the mines, by miners of skill and experience, who were placed there in charge of the Mexican workmen, and the worthless parts were there thrown away, and the evidently good paying ores were packed in sacks on the backs of mules, a distance of from one and a half to three miles, to the patios of said hacienda San Nicolas, where they are subjected to the examination of skilled ore-assorters, and if any worthless pieces of ore had escaped observation at the mines, they were rejected, and piled on one side of the patios,
203 and the remainder, or good ores, were then piled up in order. They were not all one quality, of course; some were not as rich of silver as others, which is always the case, and it is quite likely that among them, notwithstanding the care taken in their selection, there would be some poor "pay rock," or "tepetate," as Mexicans call the poor ores; but, as a whole, they were a body of very rich ores, yielding not less than an average of $675 per ton, and much of it larger amounts, and any testimony to the contrary, is untrue; and if it be true that those which remain there now are poor or worthless, then they have been very thoroughly culled, and the greater part of them taken away, and these Mexican witnesses, if they were shown the ores at all, which still remained there, must have seen only the refuse, and possibly those which were rejected or thrown away and piled up beside the patios by my assorters. The good-paying ores, so selected and piled up in the patios, were there at the abandonment in 1868, excepting only the very richest of them, which were boldly stolen and carried away from the possession of the company while I was still there, as I stated in my previous deposition, and excepting also the few average samples which, as I have said, were beneficiated as tests of their value, and the proceeds of those tested I put into the company's fund, and made use of the same in and for the advancement of said works for the benefit of the company, and the same disposition was made of the proceeds of said ores tested by De Lagñel, to my personal knowledge, all of which was lost to the company at said abandonment. There was also a large quantity of cleaned ores at the mines, but not yet packed to the patios, the quantity of each being as I stated in my previous deposition, which remained on the patios, and at the mines, on the 20th day of March, 1838, at the time of said abandonment, and any statement to the contrary is wholly untrue.

Question 26. What have you to say in reference to so much of the defensive testimony, purporting to have been given in terms or substance, by Miguel Laveaga, Pio Quinto Nuñez, Ygnacio Manjarrez, or others not already answered by you in your previous answers, and particularly to so much as states that you or the company had all the protection you desired, and that you were not denied protection by the civil or military authorities?

Answer. So far as their testimony, not already answered, relates, or is intended to relate to anything that was done or occurred, or that existed while I was superintendent, in so far it is certainly not true. It seems to me pretty evident, however, that these witnesses are speaking mainly of transactions which must have occurred subsequent to said abandonment in March, 1868, and with which the company, in fact, was in no way, directly or indirectly, connected. San Dimas, where most of these witnesses reside, is distant from said hacienda about fifteen miles, and the communication is by a narrow and dangerous mule path, almost impassable, and over a mountain some 7,000 to 8,000 feet high, and no one would pass over it from San Dimas to said hacienda, merely from curiosity to see the hacienda, or without some special business or object, and they can have no personal knowledge of the material matters of which they speak, and above all they could not know from me, what they pretend to know in these depositions—the reasons or motives that controlled or determined me in conducting said mining establishment; but they might have told, if they would, the reason of my sudden departure and abandonment of the company's interests and

204 property there, as I know some of said witnesses accelerated my departure, by breaking in the doors of the hacienda, and by the intention of violence if not of murder.

In this connection, I will name C. Manjarrez, Bartolo Rodrigues, and the old man Camacho. I did not communicate or talk about the affairs of the company, to or with any of the employees of the company, visitors, or strangers, and for which I was then called by the Mexicans, and known by the name "Carlos Mudo," that is, in English, "Speechless Charles," or "Silent Charles." The true causes of said abandonment were those stated by me in my previous deposition, and in this, and any others, assigned by any of the witnesses, are entirely untrue; and as to having received all the protection I desired from the authorities, I here state positively, that neither the company nor myself ever had any protection at all, nor any offer of it from any authority, neither for the company, its interests, nor for its American employees. I applied, personally, and also through Don Jesus Chavarria, of the capital of Durango, the most distinguished lawyer in the State, who appealed to the civil and military authorities of Durango, in the name of La Abra Mining Company, for protection for myself and for the company's interests, but it was denied me, and refused in both instances. Jesus Chavarria and Joseph Rice appealed to Governor Zarate, who was then civil and military Governor of the State, and a general in the federal army under President Juarez. I employed said Chavarria on behalf of the company, because he was a distinguished man, and able advocate, of great influence, but he was flatly denied by General Zarate, the Governor, as he, Chavarria, reported to me, and he told me that said Zarate was determined to get all American companies out of that part of Mexico, if possible. When I applied to the Governor of Durango, General Zarate, in person, in 1867, I think in July of that year, for even a letter to the prefect and judge of the district of San Dimas, requesting them to let me proceed with the works of La Abra Company unmolested, and to protect the company from the depredations committed defiantly and openly by daylight, and at night, by Mexicans, urged on and encouraged by the prefect and judge there, in carrying off the best of the company's ores, and capturing our mule trains and other property: the Governor replied that he would not give the letter of request, and that he thought it best for the company to give up the enterprise, and leave the country, under the circumstances, as the sentiment of the people, he said, was opposed to the proclamation of President Juarez, inviting foreigners there, and he thought it impossible to enforce their pledges of protection, exemption from taxation, and other obnoxious provisions. He said, in substance, that he would not attempt to protect foreigners in holding the property of the country against the sentiment and interests of the people; but I cannot, at this period, pretend to give his exact language. This, however, is a true and correct version of what he said in Spanish, properly translated into English, in denying my application for protection. He was then in the military service of the Republic.

Question 28. Did you or not ever apply to any of the authorities of, or in Sinaloa, civil or military, for protection against the capture of claimant's mule trains and supplies; and if yea, to whom did you apply, and when, and what was the result of said application? State all that took place in relation to such captures, and all that was done by the authorities, if anything, to protect said company and its property.

205 Answer. Yes; I applied both to General Ramon Corona, who was the chief in command on the Pacific slope, of the Liberal military forces under President Juarez, in or about the months of October or November, 1866, and also to the military governor and commander at San Ygnacio, whose name I cannot now recollect with certainty, but he was of the same army, and it was but a few days after I applied to General Corona for protection against the depredations upon the company's property named.

I told General Corona of the captures, or impressments of the company's property by his subordinate officials in said army, and I was politely refused such protection by said general, who declined to act in the matter, and referred me to the commanding general at San Ygnacio, under whose immediate command the impressment of the Abra Company's train of mules and supplies had been made. Said military governor of San Ygnacio declined to extend the protection asked. This last-named official was then the military governor and commander at San Ygnacio, Sinaloa. I called at his headquarters, and requested him, politely and respectfully, to return to the company the mule train and provisions captured by his troops, and I told him I had just been referred to him by General Corona. His answer was insulting to all Americans, who were not wanted there, he said, and that he would not interfere. In substance, he said that the company might be paid for the mules and supplies furnished the army, at the close of the war, but that he could not be annoyed any longer by these constant and almost daily applications of Americans for protection; and I recollect that, amongst other unreasonable things, he said that if we could not protect ourselves, we had better go back to the United States. He rudely denied the protection I asked. The said military governor and commander of the Liberal forces at San Ygnacio was, I think, named Parra, or General Parra, but as to his name, I

cannot now state it positively. As I have said before, it is exceedingly difficult for me to recollect those Mexican names, but I remember that his manner was offensive, and it was evident to me that he was unjustly prejudiced against Americans. He referred to the injurious reports put forth and circulated in San Dimas, by the local authorities, to the disparagement of the Abra Company—that we came there to influence the annexation of Durango and Sinaloa to the American Union; and although I denied the truth of those reports, which were utterly false, and I told the General so, and that such reports were gotten up by the Mexican civil authorities at San Dimas, as a pretext for expelling said Abra Company, but he persistently refused to order such protection, or even to give me a letter of request to the local authorities to protect us, which I begged of him to do, and as one of my mule trains, loaded with supplies, belonging to said Abra Mining Company, had been captured by his soldiers in the neighborhood of San Ygnacio only a few days before that, I asked him to order said train of mules and the provisions and supplies to be restored to the company, which was the main business that took me there at that time, but he refused to do so, saying, in substance, that as the supplies were already appropriated by the soldiers, their return to the company was then entirely impossible; but he did finally promise to let his soldiers hunt for the mules, about forty in number, which were so captured with said supplies, and he promised to see that the mules should be returned to the company as soon as they could be found, but said mules were never returned to said company, nor to any of its agents or representatives, but on the contrary, other trains, with the like supplies, were taken by the military authorities from said
906 company, by force, from time to time during the company's operations at Tayoltita, which by Mexicans was called "levying prestamos for the support of the military of the Republic." I cannot now recollect the exact number of mules so captured by the military authorities of the Mexican Republic, from said company, but I can approximate the number, which I believe would be, first and last, including those captured from General Bartholow, while he was superintendent, not less than two hundred and twenty, besides those abandoned at the works near Tayoltita.

Question 29. Do you know Maria Cecilia Jimenez, one of the witnesses named in said defensive testimony; and, if yea, who and what is she?

Answer. I knew her when I was at Tayoltita; she is a step-daughter of said Judge Guadalupe Soto; she did not live at Tayoltita when I was in that district, but she came there occasionally, to visit the family of said Judge Soto, her step-father. She was publicly well-known in that district as an abandoned woman, of vicious and vulgar habits.

Question 30. What is her general reputation for truth and veracity, in the said district of San Dimas, where you say she was publicly well-known?

Answer. Very bad.

Question 31. From your knowledge of the general reputation of said Cecilia in that district, for truth and veracity, would you believe her under oath?

Answer. I would not.

Question 32. State whether an employee of the Abra Silver Mining Company was murdered or not; and, if yea, by whom was he murdered, under whose superintendence of the company, and what was his name and his position with the company, and the cause of said murder?

Answer. Captain Grove was the person. It was under the superintendence of General Bartholow. Mr. Grove was captain of the supply-trains, and one of the principal employees of said company. He was murdered by said military, in the district of San Ygnacio, State of Sinaloa, while on the road to the company's mines, and a train of mules loaded with supplies for the company were taken from Grove, as conductor-in-charge of said train. I am, of course, familiar with the history of that murder, by report of the company's officers. I have heard it all, not only from the company's officers, but the Mexican officials of San Dimas, Arcadia Laveaga, Marcos Mora, Judge Soto, and the Prefect Macario Olvera, spoke freely to me of that affair, and admitted the facts, and I have heard officers of the liberal army speak of it, and some of them condemned, or said they condemned, the cowardly plan of said capture, and the brutal and unnecessary murder of Mr. Grove while trying to protect the property of the company under his charge. The particulars of that capture and murder, however, are better known to Thomas J. Bartholow, the first superindent.

Question 33. Did you know said Mexican witnesses, Ygnacio Manjarrez, Julian Romero, Paz Gurrola, Martin Delgado, Jesus Torres, Francisco Acosta, and Miguel and Arcadia Laveaga? and, if yea, where did you know them, who were they, what was their occupation, and where did they reside during the mining operations carried on there by claimant?

Answer. Yes, I knew them. I saw Ygnacio Manjarres once or twice at San Dimas, after he sold out his interest in said mines and hacienda to the Abra Company. He never visited the company's works or mines, to my knowledge, while De Laguel or myself were superintending, and I have never heard of his visiting the said mines and works.
907 He moved to Ventanas, as I was informed, soon after disposing of his interest in

said mines to the company, and from Ventanas it was said he went to Durango. He did not reside in the district of San Dimas at any time while claimant was carrying on said works under De Lagnel's superintendence, or mine. Jesus Torrez, and Francisco Acosta, both resided in the city of Durango, while claimant carried on said works. Said Torrez was a lawyer in Durango, and said Acosta a merchant there. Julian Romero was living in a cave near La Cueva, about sixty miles from Tayoltita, or from the company's works. He called himself a ranchero; I never saw him at any other place than at said cave. Paz Gurrola and Martin Delgado resided in the town of San Dimas all the time I was in that district. They were occupied in selling whiskey, or mescal, and cigars. Miguel and Arcadia Laveaga also resided at San Dimas. Miguel Laveaga owned mines, but his son, Arcadio Laveaga, was engaged principally as a politician, and office-holder.

Question 34. Have you any interest, direct, contingent, or otherwise, in the claim of La Abra Silver Mining Company, in support of which your deposition is here given, or are you agent or attorney for claimant, or for any person having such interest?

Answer. No, sir.

(Signed) CHARLES H. EXALL.

Witnesses:

(Signed) R. E. STILWELL.
" CLIFFORD SAVILLE.

Subscribed and sworn to before me, this 12th day of June, 1874.

R. E. STILWELL,
U. S. Commissioner for the Southern Dist. of New York.

[Seal of the U. S. Com'r, southern dist. of N. Y.]

UNITED STATES OF AMERICA,
Southern District and State of New York, City and County of New York, ss:

I, Richard E. Stilwell, United States commissioner for the southern district of New York, do hereby certify, that the witness herein, Charles H. Exall, of this city, and who is known to me as the person named therein, appeared before me at the office of the United States Commissioner for the said district, at the time stated therein, and was lawfully sworn by me to state the truth as a witness on behalf of claimant in the above-entitled matter, and that in answer to said interrogatories, suggested by counsel for claimant, and propounded by me, he deposed and testified as set forth in the foregoing deposition; and that at the conclusion, said deposition was carefully read over to said witness by me, and that he thereupon confirmed the truth of all the matters and facts therein stated by him, and attached his proper signature to the same, in my presence, and in the presence of the subscribing witnesses; and I further certify that said deposition was written down by Clifford Saville, who acted as my clerk for this purpose, and that said Clifford Saville has this day testified before me that he has no interest, directly or indirectly, in said claim of the Abra Company, and he is neither agent nor attorney for claimant, nor for any person having such interest; and I also certify, that I have no kind of interest, direct, contingent, or otherwise in said claim, and that I am neither agent nor attorney for claimant, nor for any person having such interest; and I further certify that I know said witness, Charles
208 H. Exall, to be a man of responsibility in this city, and of good character for truth and veracity, and that his statements are entitled to full faith and credit.

Given under my hand, and the seal of the United States commissioner for the southern district of New York, this, the twelfth day of June, A. D. 1874.

(Signed) R. E. STILWELL,
U. S. Commissioner, for the Southern District of New York.

[Seal of U. S. Com'r., southern dist. of N.Y.]

Rebutting evidence in re La Abra Silver Mining Company versus The Republic of Mexico. Deposition of Ralph Martin before the American and Mexican Claims Commissioner, Washington, D. C.

UNITED STATES OF AMERICA, SOUTHERN DISTRICT AND STATE OF NEW YORK,
Office of United States Commissioner, City and County of New York, ss:

Friday, 3 o'clock p. m., June 12th, 1874, before me, Richard E. Stilwell, United States commissioner for the southern district of New York, personally appeared Ralph Martin, who is known to me as the person here represented, and who, having been introduced as a witness in behalf of claimant, and by me lawfully affirmed to state the truth, in answer to interrogatories suggested by counsel for claimant and pro-

pounded by me, relating to the statements of witnesses for the defense in this cause, and confined solely to the rebuttal of the same, deposes and testifies as follows:

Question 1. State your name, age, citizenship, and occupation?

Answer. My name is Ralph Martin; age, forty-one years; occupation, not in active business—living upon my private means; was born in this city, New York, where I still reside, and where I have always had my permanent residence, although I have traveled and resided temporarily in other countries. I am, and always have been a citizen of the United States. My residence is No. 45 West 22d street, in this city.

Question 2. Where were you residing, temporarily, from about September, 1868, to October, 1870?

Answer. In the district of San Dimas, in the State of Durango, Republic of Mexico.

Question 3. At what particular place did you reside in said district, and especially in and during the months of April and May, 1870?

Answer. At the "Hacienda of the Candalaria Company," near the town of San Dimas, in said district, State of Durango.

Question 4. Where was the seat of government for said district of San Dimas?

Answer. At said town of San Dimas.

Question 5. Are you acquainted with "La Abra Silver Mining Company," the claimant in this case, or with any of claimant's employees or attorneys? and if yea, state their names, occupation, and residence; and also where and when you first made the acquaintance of the attorney or attorneys of claimants, and under what circumstances.

State fully what you recollect in relation thereto, without further questions.

Answer. I am not acquainted with said company, or, at least, I am not sure that I am acquainted with any other member of said company than its president, Mr.
209 George C. Collins, whom I know personally; he is a well-known wholesale tea merchant, of New York. I am acquainted with Charles H. Exall, in this city, who, as I understand it, was the last superintendent or director of claimant's mines and property in Mexico. His occupation is that of cashier of the banking-house of Washburne & Thayer, No. 62 Broadway, New York, where I have met him. I am well acquainted with James Granger, who was once in the employ of claimant, as clerk and book-keeper for said company, under Mr. Exall's superintendence, as Mr. Granger and others have informed me, and it is a well-known fact at San Dimas aforesaid. Said Granger is a native of Scotland, an English subject, and, as I think, is now residing in the said district, where I knew him during my residence in Mexico, from the fall of 1868 up to the same time in 1870. I also knew claimant's attorneys, General A. W. Adams, and Sumner Stow Ely, Esq., both of New York.

The circumstances under which I became acquainted with General Adams, which are called for by the question, are as follows: Sometime during the last days of the month of April, 1870, while I was in charge of said "Hacienda of the Candalaria Company," in said district of San Dimas, Mexico, the said General Adams came to said hacienda and presented a letter of introduction to me from one of my personal friends of New York, requesting me to show him, said general, some polite attentions during his sojourn in that part of Mexico, and I, of course, invited him to stop at said hacienda, and to partake of my hospitalities so long as he remained in that district, which invitation was accepted.

He came there with an escort, at the head of which was Colonel Francis F. Dana, who had been a lieutenant-colonel of cavalry in the service of the Mexican Republic, during the so-called Imperial war. Colonel Dana acted as interpreter for General Adams, while he remained in that district. They came there for the purpose of taking depositions, in support of the claim of said Abra Mining Company *vs.* Mexico. These are all the circumstances under which I became acquainted with said attorney, which seem to be called for by the question.

Question 6. State whether you knew one Maria Cecilia Jimenez, a witness for defence, in the said district of San Dimas, Mexico, during your residence there, from September, 1868, to October, 1870; and if you did, who and what was she, where did she reside, and if you know, what was her vocation, or calling in life, and to what authority, or Mexican official, if to any in that district, is she related, and how related; state also whether you were personally acquainted with her there, and if you know whether she met the said General Adams in your presence at said hacienda, and for what reason; and also if there was any other person living in that district called "Maria Cecilia Jimenez?"

Answer. Yes—I knew said Maria Cecilia Jimenez, by sight, and by reputation there, and I knew her personally, I may say, for she used to come to said hacienda occasionally, to visit an officer of my said company, with whom she was living as companion or mistress, and I have frequently spoken with her, but I never recognized her as a personal associate. Said Maria Cecilia Jimenez is the step-daughter of Judge Soto—Guadalupe Soto—who was the local judge of Tayoltita, in said district, or at least she was so treated and recognized by said Soto, and she was claimed and regarded by the wife of said Judge Soto as her daughter, in my presence, and

210 she was so known and regarded in that district. Said Maria Cecilia's father was a Mr. Hernandez, of said State, but the said Maria Cecilia acquired the name of "Jimenez" by the second marriage of her mother with a man of that name, as I was informed by her, and by others there who knew their history.

As to her residence, she did not live at Tayoltita with the family of said Guadalupe Soto, her step-father, but she travelled about considerably, and went home to Tayoltita occasionally. I have known her to reside at the said town of San Dimas for some months at a time, but I do not think she had any particular place of residence. She was best known at San Dimas, and there was no other woman of that name in that district. My answer to that part of the question which relates to her vocation, or "calling in life" is, that I do not know, except by common report there; her vocation was not the most commendable. She was known and recognized by the public, in said district, as an abandoned, or lewd woman.

Question 7. I now hand you a translated copy of the alleged deposition of Maria Cecilia Jimenez, said to have been taken by and before one "Cipriano Quiroz," signed by him as judge of first instance for said district, at San Dimas, Durango, and returned by him "to the Supreme Government of the State," dated "August 24th, 1871," the copy forwarded to Washington being certified "Mexico, November 8th, 1872," signed "Juan de Dios Arias, chief clerk," and which reads as follows, to wit:

"Deposition of Maria Cecilia Jimenez, called to testify in this case, who, after having been sworn to tell the truth in regard to what should be asked of her, as far as she might be able, made answer to the interrogatories as follows:

"1st. State your name age, condition in life, and residence?

"Answered: That her name is as has been stated; is 32 years of age; is married; and a resident of this mineral district."

"2d. State if it is true that two Americans offered D. Santiago Granger $5,000 with which to buy witnesses, who would say that these operations in Tayoltita had been abandoned on account of a disturbance, and that no one could be found to give such testimony?"

"Answered: That what she knows is that an American, called general, and whose name is Alonzo W. Adams, who lately came in company with Mr. Dana, was the person who, solely on his own account, summoned some operatives, who were living in Tayoltita, and who had been employed in his works, which operatives, having made their appearance, gave their testimony, the said general writing, and offering to pay them well for the loss of their time, whatever it might be; this was done without witnesses being present, or authority of any kind. That deponent afterward came to this mineral district, and being in the hacienda of the Candalaria Company, saw that the said general had quite an angry altercation with D. Santiago Granger, and with an American named Rafael Martin, which arose on account that these gentlemen did not approve of the declarations that he had taken upon himself to receive on his own account; and besides, because, in their opinion they were false, it being inferred that the said general wished to take advantage of the ignorance of the deponents, who could neither read nor write; that the result of this altercation was, that Don Rafael Martin drove the said general out of his hacienda, saying to him that he did not wish to run the risk of any compromise to the company, or to Mexico, that would be
211 likely to arise from his unjust pretensions in taking it upon himself to alone receive the declarations of the said operatives."

"With this the examination was concluded, to which, after it had been read to her, she made acknowledgment, and said that she had nothing to add thereto or take therefrom." "Signed for her, at her request, by José Antonio Cordova, with me, the judge, and the assistant witnesses." (Signed)—"Cipriano Quiroz, de la O," "J. Antonio Cordova."

Question. What have you to say, Mr. Martin, as to the truth of this statement of said Maria Cecilia Jimenez, in the above-quoted deposition? Having read the same, in my presence, and knowing its contents, go on and state all that took place, and all that was said and done by you and by said Adams and Granger at the time and place, and on the occasion referred to in said deposition, without further questions.

Answer. It is a manufactured falsehood, from beginning to end, so far as it relates to me, or to anything said or done by me, or by General Adams, Santiago Granger, or any other person or persons in my presence or hearing, or by report of others. I am the person referred to in this deposition of said Maria Cecilia Jimenez, evidently. There can be no mistake about that, for there was no other American, or person called Ralph, or Rafael Martin, in said district of San Dimas, and no other in that State, that I have ever heard of, besides which, it is true that the said attorney of claimant, General A. W. Adams, Mr. Dana, his interpreter, and Santiago Granger, were all actually there, at the "hacienda of the Candalaria Company," of which I was in charge at that time stated in this quoted deposition of said Maria Cecilia Jimenez, which was some time during the last days of April, or early in May, 1870; and I also recollect to have seen there at the same time, said Maria Cecilia Jimenez, but she was outside the hacienda, with her step-father, the said Guadalupe Soto, judge of Tayoltita,

in said district; and I saw said Maria Cecilia come into the hacienda, I think, on the same day, where she met the General and party named by her. It may be said of her that she is bold and fearless, but of insinuating manners, and on learning that the strangers, General Adams and others, had stopped at said hacienda, she was attracted there, and subsequently came, or forced herself into their presence, as stated. The difference between the customs and usages of society, there and here, rendered her conduct possible on that occasion, and not uncommon in that district. This explanation is my answer to that part of the question as to whether she met General Adams in my presence, and where, and it is the only answer I can give.

The small particle of truth contained in her said deposition, so far as it relates to me, or to anything that occurred there is, that the parties named by her were there at the time stated in her said deposition, but her ridiculous narrative of facts, as to what occurred there between General Adams, James, or Santiago Granger, and myself, is an unmitigated falsehood from beginning to end, and it is destitute of all excuse, and of all material from which to make up, or invent such a story, as no such "angry altercation," nor anything else that might be so construed, ever took place "with Don Santiago Granger and an American named Rafael Martin," nor did I ever pretend to interfere with the conduct or business of said General Adams while he was in that district, neither in taking depositions, or failing, as he certainly did, to get them taken before Judge Milan, nor in anything else. All conversations at said hacienda, and elsewhere, between said General Adams, Santiago Granger,

212 Colonel Frank Dana—"Mr. Dana," and myself, were carried on exclusively in the English language, of which Maria Cecilia Jimenez had no knowledge; and as she could not understand English at all, it would have been impossible for her to have known the fact, even if such "altercation" had taken place, and I had made the foolish and unjust remarks about General Adams, and his efforts to have testimony taken there, which is attributed to me in her so called deposition; but I repeat, that her said statement is a mere invention, a made up or fixed up statement, and evidently for no good or worthy purpose.

Question 9. How long did said Adams remain in said district of San Dimas, and where did he go from your said hacienda? State also whether you parted with him in a friendly manner, or otherwise?

Answer. He remained there, I think, about six or eight days; when he left said hacienda, I went out to "see him off," and we parted in a friendly way—we had no reason to do otherwise. He left there for Mazatlan, Sinaloa, and I have reason to believe he went to Mazatlan direct, as I know of the time of his arrival there from one of the men in my employ at said hacienda, who went down to Mazatlan with the general and his party.

Question 10. Is it true that at his said visit to San Dimas in April or May, 1870, any Mexican authority at Dimas took depositions for claimant, at the request of said General Adams; if yea, who was said authority, and who testified? And if no depositions were so taken, state why they were not taken, and if any authority refused to take them, state who that authority was, if you know?

Answer. I believe no depositions were taken for said claimant at San Dimas. I know that Anastacio Milan was then the judge of 1st instance for that district. I recollect of General Adams' complaints at that time, because he said that the witnesses, who knew of the molestation and depredations upon the Abra Company and its property, had come over from Tayoltita, a distance of fifteen miles, under a promise to tell the truth, and to state all that had occurred there, but that they had been frightened away from San Dimas, as he then said, by the authorities there, and that all of his witnesses, excepting two, had mysteriously disappeared, and that they gave no testimony; that Judge Milan turned the interpreter, Dana, and Granger, one of claimant's witnesses, out of the court-room, and that General Adams was compelled thereby to abandon said examination, and all hope of taking depositions in that district; and that Granger, and some one or two other witnesses, went to Mazatlan in order that their depositions might be taken before Isaac Sisson, the United States consul.

This is all I know about the taking of depositions in this case, except that said James, or "Santiago Granger," and Matias Avalos, told me on their return from Mazatlan, in May, 1870, that they, Granger and Avalos, had given their depositions in support of this claim, before Isaac Sisson, Esq., the said American consul at Mazatlan; and before leaving said hacienda, in April or May, 1870, General Adams again complained to me, very bitterly, of the conduct of said Judge Milan, whom he then accused of conspiracy with other authorities there, to frighten claimant's witnesses away from San Dimas, which they succeeded in doing, with but two exceptions, and of dissuading the two witnesses from testifying in this case, which was done, as he said, in open court, and finally of turning said Granger, one of the witness, and Dana, the interpreter, out of the court-room.

213 Question 11. What was the conduct of said attorney, General Adams, in April and May, 1870, in said district of San Dimas, during his efforts there to obtain

evidence in this cause, so far as you know, or have heard from any good or reliable authority?

Answer. So far as I know, or have heard from any reliable, or other source, General Adams conducted himself, and his said business there, honorably and with propriety.

Question 12. State whether you were, or not, acquainted with the general character of said Maria Cecilia Jimenez, for truth and veracity, in said district of San Dimas, by common or public repute, during your residence there, say from September, 1868, to the month of October, 1870? And if yea, was it good or bad?

Answer. I was; it was bad.

Question 13. From your knowledge of her general reputation for truth and veracity in said district, where she resides and "is best known," would you believe her under oath?

Answer. No, I would not. I certainly would not believe her, provided she had a larger interest or object in swearing falsely than in telling the truth.

Question 14. State whether you know the value of said Abra Company's mines near Tayoltita, and of the quantity and value of ores extracted and abandoned by claimant in that mining district; or of the kind of consideration with which said company was treated by the Mexican authorities there; or of the kind and degree of protection extended to said company and its directors in its said mining operations; or whether it is true that said company, or other Americans in said Mexican States of Sinaloa and Durango, enjoyed all necessary security, in a higher degree than the Mexicans themselves; and if it is also true that the superintendent, and other American employees of La Abra Company, were never molested nor interfered with by the authorities, nor by the people; and whether it is true or false that the superintendent of said company, Mr. Exall, was arrested and imprisoned there, and the works of claimant paralyzed by reason of said molestation; and whether it is true or false that the mule trains of supplies belonging to the Abra Company were captured or impressed by the military of the Republic, on the road from Mazatlan to Tayoltita; and whether or not one of the officers of said Abra Company, Mr. Grove, the captain of the company's supply trains, was actually killed, or murdered, by said Mexicans, while on the road between Mazatlan, Sinaloa, and San Dimas, with a mule train of supplies for said company; and, finally, whether there was any such thing known there as ample protection to the lives of the American employees, and the property of said company, or other Americans, or whether any effort was made by Mexican authorities to extend such protection to them; or if you know whether other American companies than the Abra were driven away from their works by like interferences and molestations by Mexican authorities, and by what authorities, and whether any of the officers and other American employees were actually killed by said disturbances or not?

Answer. I do not know the quantity or value of said ores extracted, nor of the mines abandoned by claimant. I never visited the mines of that company, and, of course, I can say nothing as to their value, except by hearsay. I did not go to that country until after the troubles and molestations of claimant, named in the
214 question, had taken place, but I can say that the said killing of Mr. Grove, an officer of that company, by the said Mexicans; the collection of prestamos by the authorities, and other molestations and interferences named in the question; the arrest and imprisonment of Mr. Exall, the company's last superintendent there; the murder and wounding of a number of American officers of the "Carmen Mining Company," a few miles distant from San Dimas, and the breaking up of its mining enterprise, also in consequence; the driving away of its American employees, and other similar disturbances of Americans in that mining region, named in the question, were matters of common talk there, after I went to San Dimas, and some of those disturbances, molestations, and murders were publicly well known, and commented upon freely by Mexicans there, and I believe them to be true. As for the question of protection, I never witnessed any effort on the part of Mexican authorities to extend any such protection as that named in the question, and to a person who has lived in that country as long as I did, it is rather a novel thing to hear it said that Americans were better protected in life and property than Mexican citizens, and especially in that district.

There was, in reality, no protection given to foreigners in that country, and I never knew any effort to be made by the authorities there to extend protection to Americans who were at variance with Mexicans, excepting only in cases where the profits of the mining enterprise were shared by said authorities.

Question 15. Were you, or not, well acquainted with said Martias Avalos; and if yea, was he, or not, a reliable man, and what was his character, good or bad, for truth and veracity, in that district?

Answer. Yes—I knew him well, and I had business relations with him during my entire residence in that district. He was a laborer in that district, and had once been mail-carrier, but he was for more than a year acting occasionally as mail-carrier and

as my servant. He was an honest, reliable man, of good character for truth. He was regarded there, as I believe, by all who knew him, as an honest, industrious, and reliable man.

Question 16. Was said Martias Avalos, or other laboring men or miners in that district, of sufficient intelligence in law matters to know the meaning of the term "extra-judicial?"

Answer. No; I should think not. Neither Avalos, nor any other of those Mexican laborers, would know anything of such law terms, nor of their application.

Question 17. Did you or not know Jesus Torrez, Guadalupe Soto, Refugio Fonseca, Julian Romero, Paz Gurrola, Martin Delgado, Francisco Acosta, and Miguel and Arcadia Laveaga, all of whom are reported as witnesses for the defence in this case; and if yea, who were they, where did they reside, and what was their occupation during your residence in said district?

Answer. I do not know where Refugio Fonseca resided; he did not reside in San Dimas. Ygnacio Manjarrez, as I was informed, moved to Ventanas, and thence to Durango city, after selling his interest in the mines of the Abra Company. I saw him once in the district of San Dimas, during the years I resided there. He was then only visiting there, and was entertained, at San Dimas, by Miguel Laveaga, for a day or two. Julian Romero resided at La Cueva, in a *cave*, as a ranchero, which was about fifty miles from San Dimas, on the road to Durango. Paz Gurrola and Martin Delgado resided at the said town of San Dimas, and were occupied as mer-
215 chants, so-called, there. They sold mescal, corn, beans, cigarettes, and soap. Jesus Torrez was a lawyer in the city of Durango; and Francisco Acosta also resided at Durango city, and was a merchant there. Miguel and Arcadio Laveaga, father and son, were mine owners, and resided at the town of San Dimas while I was there, and for many years before, as I was informed. Arcadio was also a merchant. Arcadio Laveaga had several times held government office there, and was gefe politico, or chief magistrate, when I was at San Dimas. Guadalupe Soto was local judge at Tayoltita, and it was notorious that he resided at the hacienda of claimant, the Abra Company, after that company was broken up there.

Question 18. Have you any interest, direct, contingent, or otherwise, in the claim of La Abra Silver Mining Company, in behalf of which your deposition is here given, or are you now, or have you ever been agent or attorney for claimant, of for any person having such interest?

Answer. No; not at all. I have no kind of agency or interest in the case, of any conceivable nature, and never have had.

(Signed) RALPH MARTIN.

Subscribed and sworn to before me, this 12th day of June, 1874.

(Signed) R. E. STILWELL,
U. S. Commissioner.

[Seal of U. S. commissioner—Southern district of New York.]

Witnesses:
R. E. STILWELL.
CLIFFORD SAVILLE.

UNITED STATES OF AMERICA,
Southern District and State of New York, City and County of New York, ss:

I, Richard E. Stilwell, United States commissioner for the southern district of New York, do hereby certify, that the witness herein, Ralph Martin, of this city, and who is known to me as the person named therein, appeared before me, at the office of the United States commissioner for the said district, at the time stated therein, and was lawfully affirmed by me to state the truth, as a witness on behalf of claimant in the above-entitled matter, and that in answer to said interrogatories, suggested by counsel for claimant, and propounded by me, he deposed and testified as set forth in the foregoing deposition, and that, at the conclusion, said deposition was carefully read over to said witness by me, and that he thereupon confirmed the truth of all the matters and facts therein stated by him, and attached his proper signature to the same in my presence, and in the presence of the subscribing witnesses; and I further certify, that said deposition was written down by Clifford Saville, who acted as my clerk for this purpose, and that said Clifford Saville has this day testified before me, that he has no interest, directly or indirectly, in said claim of the Abra Company, and he is neither agent nor attorney for claimant, nor for any person having such interest; and I also certify, that I have no kind of interest, direct, contingent, or otherwise, in said claim, and that I am neither agent nor attorney for claimant, nor for any person having such interest; and I further certify, that I know said witness,

Ralph Martin, to be a man of responsibility in this city, and of good character for truth and veracity, and that his statements are entitled to full faith and credit.

216 Given under my hand, and the seal of the United States commissioner for the southern district of New York, this the twelfth day of June, A. D. 1874.

(Signed,) R. E. STILWELL,
U. S. Commissioner for the Southern District of New York.

[Seal of U. S. commissioner—Southern district of New York.]

Deposition of General Thomas J. Bartholow.

Rebutting evidence in re La Abra Silver Mining Company versus The Republic of Mexico. Before the Joint American and Mexican Claims Commission in session at Washington, D C., under the Treaty of July 4th, 1868.

UNITED STATES OF AMERICA, STATE OF MISSOURI,
Office of United States Commissioner, Eastern District of Missouri, City and County of Saint Louis, ss:

Ten o'clock, a. m., June 22d, 1874, before me, Enos Clarke, commissioner of the United States, in and for the eastern district of Missouri, personally appeared Thomas J. Bartholow, of Saint Louis, as a witness on behalf of claimant in the above-entitled cause, and being personally well known to me as a man of responsibility, and a competent witness, and having administered to him the usual oath according to law, to speak the truth in answer to the following interrogatories, suggested by counsel for claimant, and propounded to him by me, with reference to the reported statements of Mexican witnesses, filed by defense in this case, a translated copy of which is handed to this witness and read by him in my presence, and understanding their contents, he deposes and testifies as follows:

Question 1. State your name, age, citizenship, residence, and occupation?

Answer. My name is Thomas J. Bartholow; I am forty-eight years of age; I was born in Howard county, in the State of Maryland, in the United States of America; I am now, and always was a citizen of the United States. My residence is number 916 Choteau avenue, Saint Louis, Missouri, and my occupation is that of President of the "Banking House of Bartholow, Lewis & Co.," in said city.

Question 2. Do you or not know La Abra Silver Mining Company, the claimant in this cause, and, if yes, when and how long did you know said company?

Answer. Yes, I know claimant, the said Abra Silver Mining Company. I have known said company ever since its organization, in 1865, having been, myself, one of its originators. I was also the first superintendent of said company's works.

Question 3. State how said company originated, if you know, and how and upon what basis it was organized—for what purpose, and what was your agency, if any, in the matter of its origin and conduct?

Answer. Certain silver mines, haciendas, and reduction works, situate in the mineral district of Tayoltita, in the district of San Dimas, in the State of Durango, in the Republic of Mexico, were brought to the notice of myself, and of several other gentlemen, all citizens of the United States, residing at New York, Baltimore, Wheeling, and Saint Louis, who subsequently became the members and stockholders of this company at its formation by General William H. Smith, who was himself owner

217 of a valuable mine in the same district of Tayoltita; he was agent for the owners of said Abra property, and was sent to New York by the owners, Don Juan Castillo de Valle, and Ygnacio Manjarrez, of San Dimas district, Durango, Mexico. We heard and considered the proposition of said agent, which was to sell and dispose of half or two-thirds of said property, in order to raise money to enable said owners to purchase a stamp mill, modern machinery and appliances, with which to work said mines on a larger scale. We had also noticed the flattering accounts of the wealth of said mines, by Baron von Humboldt, and by the English explorer, Ward, in his history of the successful working of said mines at Tayoltita by the celebrated Zambrano. He, Smith, referred to the good prospect of protection by Mexican authorities there, who would, he thought, certainly obey the recent proclamations of the Mexican Government, inviting foreign capital and labor there to develop the resources of that country, mineral and agricultural, and after maturely considering the question, we called a meeting of capitalists, being one of them myself, who subsequently became stockholders in said company. We resolved to investigate the matter, and said gentlemen voted to send David J. Garth, one of the stockholders, and myself, to investigate the same by a thorough examination of said mines and property at Tayoltita, Mexico, with instructions, that if we should find said mines and haciendas as represented, and the prospects of realizing upon our investments, and of

receiving the protection of said authorities, as flattering as represented in said proclamation of the Mexican Government, that we should then make said purchase, to the best possible advantage in our judgment, before returning to the United States; and that said capitalists should then form a corporation, to own and work the same, which was subsequently done. Said agent, William H. Smith, was duly commissioned by said owners, De Valle and Manjarrez, to sell said property, subject to a reserved interest which they wished to retain, and in case that could not be done, he was authorized to sell their entire interest, I think for one hundred and fifty thousand dollars, said owners not having the necessary capital to purchase a stamp mill and other modern machinery, and to transport the same from the United States to their said mines, in Mexico, for opening and working the same upon the scale demanded by their importance. We did not purchase of said agent at New York, as we considered the enterprise and investment too large to make, without a thorough examination of said mines and property, upon the ground.

Mr. David J. Garth and myself accordingly proceeded to Mexico, in the month of March or April, 1865, via Panama and the Pacific coast, and, in the month of June, 1865, we arrived at said mines, near Tayoltita, Mexico, and, as instructed, we thoroughly examined said mines, and their ores, and we tested the richness of the same, by reducing to silver, average samples taken out by us promiscuously from "La Luz," "El Rosario," "El Cristo," "La Talpa," and other mines belonging to said property; we also tested an average lot taken from "La Abra" mine, which we subsequently purchased from J. V. Hardy and a Mr. Luce; we also thoroughly examined the haciendas and old reduction works of said owners, Don Juan Castillo de Valle and Ygnacio Manjarrez, before we made them an offer for said property, which we finally purchased, paying the said owners, De Valle and Manjarrez, fifty thousand dollars in gold coin for said mines, and seven thousand dollars in gold coin for their improvements, mining tools, furniture, and all other personal property belonging and
218 appertaining to said hacienda, "San Nicolas," and its reduction works, making fifty-seven thousand dollars in gold coin, which we paid for said mines and property, into the hands of said Don Juan Castillo de Valle, for himself and as attorney for said Ygnacio Manjarrez, his partner, over the counter of the banking-house of "Echeguren, Quintana & Company," of Mazatlan, Mexico, who paid to said owners for claimant, in my presence, the fifty-seven thousand dollars, gold coin, said bankers accepting my drafts for the same, which were duly honored and paid upon presentation by them at San Francisco or New York, I do not now remember which. We then took from said owners the legal and original evidences of denouncement and possession, and the title deeds of said mines and property, in the name of said Garth and myself, for the reason that said Abra Company was not, at that time, formed or legally organized, and we also purchased of J. V. Hardy and said Luce, twenty-two twenty-fourth parts of the "Abra Mine," for which we paid twenty-two thousand dollars gold, and we received from them the legal denouncement papers and title deeds to the same, which title deeds I forwarded to the proper officers at the city of Durango, for record.

Said Abra Mine was lying immediately contiguous to said mines which we purchased of De Valle and Manjarrez, and was also considered of great value, as it had been previously worked with immense profit by said Zambrano, as represented to us by every intelligent person to whom we spoke on the subject, in that country, who were well informed as to the history of said mine, which is also favorably mentioned and referred to in "Ward's Mexico," as one of the mines worked, "in bonanza," by Zambrano. We then reported said purchases, and all the facts exactly as they existed there, to said gentlemen, capitalists, all of whom were intimate acquaintances, and some of them personal friends and relatives of said Garth and myself, and thereupon they formed said Abra Silver Mining Company, and organized the same under the general mining laws of the State of New York, to work said mines in Mexico, which organization was perfected on the eighteenth (18th) day of November, 1865, and said mines and haciendas were duly conveyed to said company, by said Garth and myself, we being amongst the very largest stockholders of the same. In answer to that part of the question as to the reason why, or for what purpose said company was organized, I can say that it was organized in good faith, and upon a strictly cash basis, and one of the strong inducements to undertake this mining enterprise was the inviting and attractive proclamations of President Juarez, of the Mexican Republic, adopted by the State authorities of Durango and Sinaloa, offering, as they did, ample protection to foreigners and their capital, and exemption of taxes, port dues, &c.

After receiving the legal titles to all of said property, as we did, without any reserved interest to said former owners, the said Garth immediately returned to New York, and I proceeded to the city of San Francisco, Alta California, and I there purchased, for and in the name of said company, as the same had been determined upon by said Garth and myself, a ten-stamp mill, and other machinery and modern appliances for running or working the same at said mines; and I also purchased provisions

and supplies of every kind and description, needed by the officers and employees, which could not be purchased to advantage in Mexico, and I shipped the same to the port of Mazatlan, Sinaloa, by steamships and sailing vessels, and from there said machinery and supplies were transported by mule trains, over the mountains of Sinaloa and Durango, to the said hacienda of La Abra Company, San Nicolas, near to
219 Tayoltita, and I commenced, as superintendent, the work of erecting a mill-house for said stamp-mill, a new hacienda adjoining the old hacienda, San Nicolas, out-houses for officers and employees, and the opening of said mines, with general preparations for carrying on said mining enterprise on a large scale, as was anticipated by said stockholders. In the mean time, the said Garth and myself had reported to said stockholders, at New York, our entire action and conduct in the matter of said purchases and preparations, which reports were accepted and fully approved by said stockholders, who, upon the organization of said company, appointed me as their first superintendent of their said mining operations, and requested me to remain as such superintendent until said works were fairly started, and in successful operation. I had already requested said stockholders, and subsequently the company, after its organization, to appoint a superintendent to relieve me, as my business in St. Louis was of greater importance to me than my interest in the mining enterprise. My successor was appointed, and relieved me at said mines, in the month of May, 1866.

Question 4. Who succeeded you as superintendent?

Answer. Colonel Julian A. De Lagnel.

Question 5. When said De Lagnel, your successor, arrived at the hacienda and took charge as superintendent, were there any ores in and about the patios of the hacienda? and if yea, state as to their amount, kind, and quality.

Answer. At the time said De Lagnel took charge, and I ceased to be superintendent, there was but a small quantity of ores at the patios of the hacienda, for the reason that the work principally done by me was in purchasing and transporting to said mines, the stamp-mill and machinery, powder, quicksilver, provisions and supplies, erecting said buildings, and opening the mines as aforesaid. There was some mining done by me, and under my direction, in re-opening the mines and placing them in working order. The ores thus obtained were carefully assorted, packed to the hacienda and piled up in order for beneficiation, possibly to the amount of two hundred tons or a little more, all of which were of good quality, and their value in pure silver, per carga, was from three to fifteen marks, or an average of eight or nine marks per carga. This I know to be true, from experimental assays of average lots so assorted and tested by me.

Question 6. State if it is true that "an agent or commissioner" was ever sent by said Abra Company, or by any of its stockholders, or representatives, or if any such "agent or commissioner" came to examine into said mining enterprise of the company at Tayoltita, during your superintendence of the same, or at any time after your purchase of said mines, up to May, 1866?

Answer. No. No such agent or commissioner was ever sent by said company, and none ever came to Tayoltita, nor to the said mines or works of the company, during the time stated in the question, nor at any other time, for no such examination into said enterprise was ever ordered or contemplated by the company, nor by its stockholders, as all of their acts, pertaining to the interests of the company and its mining enterprise, were known to me.

Question 7. Refer to Exhibit 3, of the defensive testimony now shown you, in which is presented by the defence, a letter of "Jesus Torrez, licentiate," and endorsed by "Francisco Acosta, a merchant," before the juez de paz, of Durango, on the 31st day of July, 1872, in which it is stated in substance, "that these Americans,
220 (meaning yourself and D. J. Garth, as representatives of the Abra Company), offered a Spaniard, named Juan Castillo de Valle, the sum of fifty thousand dollars for the Luz and Rosario mines, the only ones that were worked at that time, and agreed to make the offer good, provided they should succeed in forming a company in the United States;" "that they afterwards returned and bought the mines in the price as before stated, and gave to the enterprise the name of 'La Abra;'" that he, Torrez, had "lived about ten years in the said district of San Dimas, and well informed in regard to said mines, and knowing that they only yielded from eighty to one hundred cargas of ore per month, and being well aware that the said D. Juan Castillo had been working them for ten years without any profit whatever, could not help but show that said Americans had been away for the purpose of deceiving the capitalists of the United States, in order to carry into effect a profitable speculation for themselves;" "that this is really the truth of the business, I was convinced from the movements of said Americans themselves, for they did not go to work in the mines in a regular way, but rather failed to observe the smallest details usually taken into account in the working of mines; that their first operation was to pile up a lot of 'tepetate,' or rock that does not yield silver, to the amount of from ten to fourteen thousand cargas, which they denominated 'ore;' that this was heaped up and covered over with about three or four hundred cargas of real ore, in the

hacienda of Tayoltita, and all of it designated as ore by them, in order that it might be seen by an agent or commissioner who came from the United States for the purpose of examining into the enterprise on behalf of the company in that country;" "that such being the fact, it afterwards turned out that the ore failed to yield as much silver as had been calculated upon, which fact naturally gave rise to the supposition that they had been robbed by their employees, with the knowledge of the authorities, which is entirely false, as can be fully substantiated by going to the hacienda of Tayoltita, where the pile of rock alluded to can still be seen, without any one taking the slightest notice of it;" "that the foregoing is all the information I can give you, in answer to your letter of this date;" "that D. Francisco Acosta, of this city, is perfectly well informed in regard to this matter, and D. Juan Castillo, as well as D. Miguel, and D. Arcadio Laveaga, D. M. Delgado, and D. Camilo Contreras, of San Dimas, and finally, all the residents of that place." "I am," &c. (Signed) "Jesus Torres."

13th question. What have you to say with regard to the statements of said Torres, above quoted; who are said Torres and Acosta, and where did they reside?

Answer. The whole of the above-quoted statement, in said letter of Jesus Torres, is a pure invention; it has no ground work in truth whatever, as no such circumstance ever occurred at the "hacienda of Tayoltita," or at the company's works, as that related in said letter. It is false that the company's first operation was to pile up a pile of "tepetate," or "rock that did not yield silver," to the amount of ten to fourteen thousand cargas, or any other quantity, "which they denominated ore," and which they "covered over with about three or four hundred cargas of real ore," or any other quantity of the same, nor could such a thing have taken place there without my knowing it, for the "first operations of the company," spoken of in said letter, were conducted by me, as the company's superintendent, and if any such foolish and useless fraud, or intention of fraud, had been committed there, it must have been done by me. I have already stated that no such agent or commissioner
221 was ever sent there by the company, nor by any of its stockholders or representatives, and no such agent or commissioner ever visited said mines or works, to my knowledge. I have already stated the quantity of ore taken from the mines during my superintendence, and packed to the hacienda at San Nicolas. I know of no other ores or "tepetate" at or near said hacienda, nor on the premises of said company, except a small lot of about forty tons of ore, which were there when I took possession, and owned by Don Juan Castillo de Valle and Ygnacio Manjarrez, the former owners, and which were reduced by them, with my consent. There was no occasion for any such commission, nor for practicing the deception spoken of in said letter, as the mines were bought by said Garth and myself at our first visit to Tayoltita, and were fully paid for in gold coin, and in good faith by us, but a few days after the purchase of said mines and property, as aforesaid. Mr. Garth and myself were fully empowered to purchase said property, upon our own judgment, which we did do, without returning to the United States to consult the stockholders or capitalists aforesaid. Mr. Garth never visited said mines and property at Tayoltita but once, and the said purchase was made at that visit; and I never returned after that to said mines and hacienda until I returned as superintendent, to put up said stamp mill, which I purchased at, and shipped from San Francisco to said mines, as I have stated, and this I did before I returned home to the United States, without consultation with any other person than said Garth, and without any further advices or instructions than those given by said capitalists at New York, which were full and ample at the time said Garth and myself started for Mexico; so that there was no ground, necessity, or sense in practicing deception, nor for piling up "tepetate" and covering it up with good ore, for, in addition to the dishonor attaching to such an operation, it would have been utterly senseless, as we would have been simply deceiving ourselves by so doing, and nothing to gain by it, for so great was our confidence in this mining enterprise that, upon my own suggestion, the company was organized and the stock issued strictly upon a cash basis, at its par value of one hundred dollars per share in gold coin, and neither the company nor its stockholders ever contemplated selling their said mines and property at Tayoltita, nor did they ever place the stock of the company, or any part of it, upon the market for sale, nor offered the same for sale, but, on the contrary, it is still held and owned by the same parties who originated and organized said enterprise, except in one or two instances of transfers of small amounts of stock where parties were not able to hold it.

I invested, at the organization of the company, five thousand dollars in gold coin, for fifty shares of said stock, which I soon after increased to nine thousand dollars, and subsequently to sixteen thousand dollars, gold coin, for one hundred and sixty shares of said stock, and the said David J. Garth, and his brother, John Garth, and his cousin, Dabney C. Garth, took two hundred and fifty shares of said stock; for which they paid twenty-five thousand dollars in gold coin; and both the said David J. Garth and myself, and George C. Collins, the President of the company, and William L. Hearn, its first President, J. Wilcox Brown, S. F. Nuckolls, John D. Perry, and

other stockholders of said company, after being informed of the great expense attending the opening of said mines, and other preparations for carrying on said enterprise, and of the robberies of the company's mule-trains of supplies and other property by the Mexican military authorities, found it necessary to loan or advance the com-
222 pany large sums of money with which to purchase and replace the same, while said works were going on under the superintendence of Mr. Exall, thereby showing our continued confidence in the value of said mines, and the good prospects for realizing upon our investments, if protected, still clinging to the hope that the company might be better protected at the close of the war then pending there, and that upon completing its extensive mining preparations, the company would soon be able to realize upon its heavy investments; but in these expectations we were disappointed, as the result has shown, and owing to the expulsion of the company from its mines and property, and the unexpected termination of its business, the sums of money so advanced by the stockholders still remain unpaid, to my knowledge. It is not known to me where said Torres and Acosta reside, nor who or what they are; neither of them ever visited the company's works or mines while I was conducting said works at Tayoltita, to my knowledge; it is therefore difficult for me to perceive how either of said persons could know what took place during the "first operations" of said company, which were conducted by me. These facts render the contents of this Torres letter too ridiculous and absurd for further notice.

Question 8. Say whether, in building the new hacienda, the old hacienda, San Nicolas, was torn down or destroyed, or any part of the same molested or impaired?

Answer. No; I commenced to build the new hacienda, adjoining the old one, without taking down or destroying any part of the old hacienda, "San Nicolas," or other buildings and improvements found there at the purchase of said property. No such tearing down or demolition of the old buildings was ever thought of or contemplated by me; nor was it necessary, to give room to the new buildings and other improvements, as we found it necessary to extend the mill-races, and to put up the mill-house and stamp-mill about three hundred feet from the old reduction works, and made use of the old patios as a convenient place upon which to pile up the assorted ores.

Question 9. Did you know one Leandro Molina? and, if yea, did he ever work for the company under your superintendence?

Answer. No; I did not know said Leandro Molina, and never heard of him. I am satisfied he never worked for the company whilst I was superintendent.

Question 10. Is it true, as stated by Pio Quinto Nuñez, and Cepomucino Manjarrez, or other witnesses in said defensive testimony, that said company was never disturbed in their mining operations by Mexican authorities or people; that they were not denied the protection of the authorities of Mexico, in Durango, nor in Sinaloa; that mules or mule-trains were never captured and taken from said company, by force, by said athorities; and, if not true, state how and why said statements are not true?

Answer. No—such statements are wholly untrue; on the contrary, two entire mule-trains, loaded with provisions and supplies, belonging to said company, were captured by the military authorities of the Mexican Republic; and the mules and supplies so captured and taken by force, were appropriated to the use of said army, and I never was able to recover any of said mules or supplies, nor did said Abra Company ever receive any indemnity or compensation for the same, although I applied to General Ramon Corona, the chief in command of said forces on the Pacific coast, to restore to the company the property so captured by his subordinate officers, and at the
223 same time implored protection from him against further depredations of that character against the property of the company. He responded to said appeal by referring me to the commanding officer at San Ygnacio, Sinaloa, under whose military jurisdiction the property was seized. I visited said commander at San Ygnacio, whose name, I think, was General Guerra, or General Parra—I do not now recollect which of the two was then commanding at that point. I knew them both, and a number of other officers of said army, whose troops had committed similar depredations, and had levied other "prestamos" upon the Abra Company, while under my superintendence. I related the circumstances attending said captures, or robberies from the company, and of the murder of the company's quartermaster, who was acting as captain of said mule-trains, to said commanding general, but he refused the protection I asked on behalf of the Abra Company, and he refused to order a return of said mules and supplies, or to indemnify the company for the same. He stated that he had no authority to indemnify the company, and that it was too late to restore the property, as it had passed out of his control. He also refused to instruct the authorities at San Dimas, and Tayoltita, as I requested him to do, to protect the Abra Company from further depredations upon its property and mines in that district. It is not true that said company was not disturbed in its mining operations while I was superintending the same. During my superintendence of said company's works, our employees were frequently interfered with by the local authorities of said district, and, on two or three occasions, they actually went into the mines and discharged the men engaged in labor, upon the pretext that we did not employ all the men in the

district who were out of labor, and that we did not work the mines to suit them. I had many such difficulties to encounter with the local authorities, which seriously interfered with the operations of the company, which caused me to appeal to the Governor of Durango for protection against the unwarranted acts of the local authorities, who refused to interfere, or to afford any protection to the company. I also appealed to the prefect of the district, whose name, I think, was Laveaga, with the same result, for I soon ascertained that he was a bitter enemy to all Americans, and opposed to their working the mines of Mexico. I was also compelled by the military authorities of the Republic, under the command of said General Corona, to pay a number of "prestamos," or forced loans, levied upon said Abra Company's stamp-mill, machinery, and supplies, from three to six hundred dollars each, one of which, for six hundred dollars, was paid for me by William G. S. Clark, of Camacho, Sinaloa, an English gentleman who was owner of a large estate at Camacho, and who assisted me, as my contractor, in transporting said machinery and supplies from Mazatlan, Sinaloa, to the company's mines in Durango. One of the employees of the company, who had been sent to Mazatlan on business, was robbed by said military authorities, near Camacho, in Sinaloa, while on his return from Mazatlan to the company's works, of eleven hundred and seventy-eight dollars of the moneys of the company, which amount never was repaid to the company, nor was the company ever indemnified for the same in any way. I recollect the exact amount taken, because I entered the same on the books of the company, charging the same to the "robbery account," where other "prestamos" and robberies were entered. The name of this employee who was so robbed of the company's money, was George Scott, commonly called "Scotty." This transaction was nothing less than highway robbery by
224 said troops, and was in addition to the several "prestamos" levied and enforced by the military authorities, which, I have said, ranged from three to six hundred dollars. The amount of cash "prestamos," so levied and enforced during my said superintendence, amounted to a little more than three thousand dollars, but the value of the mule trains and supplies so taken from the company by the said military, while I was superintendent, was not less than twenty-five thousand dollars. It is not true that the company ever had protection from any of the Mexican authorities, either national or local, nor any offer of protection, when applied for by me and other officers of the company under my superintendence.

Question 11. Who and what was said Cepomucino Manjarrez, where did he reside, and what did you know of him?

Answer. He was said to be a brother of Ygnacio Manjarrez, one of the former owners of said mines and property. He resided in the mining district of San Dimas. He worked for the company, under my superintendence, as muleteer and packer, and sometimes about the hacienda. He was an intemperate, dangerous, and turbulent character, and at one time was in a conspiracy and headed a mob to seize the hacienda, and to drive me and my American employees out of the country. They gathered around the hacienda, with machetes in hand, but did not make the attack, as contemplated. Having ascertained all about the plot, I sent, the next day, for said Manjarrez to come to the office of the hacienda. He came, and I told him what I had learned—that he was one of the ringleaders of the mob to kill or drive me out, the night before, which he confessed to be true, but said that he was led into the conspiracy by other parties, and I thereupon discharged him from the employ of the company, and he left.

Question 12. Is it true, as stated by one of the witnesses for defence, in substance, that the Americans sent to Tayoltita, to direct said mining operations, were ignorant of their business, and that they went to work at the same improperly, and without observing the laws and usages governing such mining operations?

Answer. No, it is not true in any sense, for the superintendents and subordinate officers of the Abra Company were qualified for their positions, both by a knowledge of the science and practice of such mining operations; and said works, while I was superintendent, were conducted properly, skillfully, and lawfully, and in strict accordance with the usages of such mining operations, by machinery and other modern appliances, such as we introduced there.

Question 13. Were you, or any of the American employees under your control, as superintendent of said mining operations, ever guilty of any disobedience to the laws of the Republic of Mexico, or of the States in which said mines and property are located, or did you ever interfere, in anywise, with the political affairs of that country?

Answer. No; certainly not.

Question 14. You have spoken of the murder of one of the employees of the company who was in charge of mule trains of supplies for the company; state the name of the employee who was so murdered, and when and where the same occurred, and the circumstances attending said murder. Also state what became of the train and supplies that was the special charge of the murdered employee?

Answer. His name was William Grove; he was one of my most valued em-
225 ployees; he was murdered between the town of San Ygnacio and Tayoltita, I

afterwards recovered his body; it was badly mutilated by gun-shot wounds, evidently produced by a volley of musketry. This occurred in January or February, 1866. At the time of the murder Mr. Grove was in the employ of the Abra Company, as quartermaster, and was entrusted with the charge of one of our mule trains, used for transportation of supplies. Mr. Grove was murdered by soldiers of the Republican army. The train that was the special charge of Mr. Grove, was taken possession of by the military authorities, with its entire outfit and supplies, all of which were totally lost to the Abra Company. The mule trains owned and worked by the company, at that time, were three in number, aggregating about one hundred and fifty mules; the train so taken, was one of the three here mentioned.

Question 15. Is it true that extravagant or unreasonable salaries or wages were paid to the officers, or to the American, or other employees, in the conduct of said works, during your superintendence of the same, as stated by one of the witnesses for the defence?

Answer. No, that is not true. I paid only the usual salaries and wages to such employees. The price paid by me for skilled labor there, in building, and mining for said company, was even less, much less than was paid for the same services in Nevada and California.

Question 15. What were the opportunities of said Mexican employees of the company, at the mines, or at the reduction works, or of other Mexicans residing at San Dimas, for knowing the business of the company—how it was managed by the superintendent, or what salaries were paid American employees who conducted said works?

Answer. They had no such opportunities, and they knew nothing about such business matters of the company. The most of the Mexican laborers at the mines of the company, only came to the hacienda once a week, excepting the times when they were interfered with and discharged from the employ of the company, by order of the prefect or gefe, which I have mentioned; and neither said laborers at the mines, reduction works or elsewhere, knew anything about the salaries paid to said American employees, or of the other business of the company's superintendent, except by mere unreliable hearsay reports. San Dimas is fifteen miles distant from the company's works near Tayoltita, and, of course, persons residing there could know nothing of the company's business, except by hearsay. All conversations regarding said works, and the business of the company, were carried on in the English language exclusively, between said American employees and myself, and none of said Mexican employees understood or could speak the English language, and although I understood and spoke the Spanish language, and gave my orders to Mexican employees in their own language, I habitually refrained from talking to them about the business affairs of the company, or making any exposé of the business or conduct of said works, to said laborers, or any one else.

Question 16. State how many employees you had in the company's service, upon an average, during your conduct of said works, and how they were supplied with provisions; how far said provisions and other supplies for carrying on said works had to be transported, and whether it would have been possible for the company to have carried on said works, on the scale upon which the same were operated, without owning and working mule-trains for transporting said supplies to the company, and its ores to the hacienda?

226 Answer. I employed from one hundred to one hundred and sixty mechanics, miners, and laborers, including muleteers, during my superintendence; they were supplied with provisions purchased in, and packed from the city of Durango, and from the valleys of Sinaloa, to the company's works at Tayoltita. Other supplies, such as powder for blasting, quicksilver, fuse, mining tools, also bacon, flour and butter, were purchased at and shipped from San Francisco, California, to Mazatlan, and thence by pack-mules to the company's works aforesaid. The distance from Durango to Tayoltita was one hundred and sixty miles, or more, and the distance from Mazatlan to the company's works was about the same. Some of the provisions used, such as meats, lard, salt, and other small supplies, were purchased for me by my contractors, in the valley of Sinaloa, of whom I now recollect José Maria Loaiza, of San Ygnacio, as one of the principal contractors for making said purchases. The average distance of said valley towns from the company's works was about one hundred miles.

In carrying on works of that magnitude, it was, of course, absolutely necessary for the company to own and work large numbers of mules, which it did, as I have stated. Mule trains furnished the only possible means for the transportation of supplies.

Question 17. What, in your judgment, was the value of said mines and property of La Abra Silver Mining Company, and what amount of actual damage and loss has the company suffered from its forced abandonment of, or expulsion from the same?

Answer. The said mines and property of La Abra Silver Mining Company were worth, in my judgment, three millions of dollars, provided the company had been protected by the Mexican authorities in carrying on said works as commenced. From my examination of the said mines, which was thorough and critical; my observations in re-opening them and preparing them for work; the richness and abundance of the

ores thus developed; the capacity and reliability of the stamp-mill and machinery erected; the richness of the ores of said mines, as shown by the experimental tests made by me, the company would have readily realized in net profit, annually, a fair interest upon three million of dollars, and, in my best judgment, the company has sustained damages to the amount of at least three million dollars, on account of the forced abandonment of their said mines and property.

Question 18. What exhibits were made to you, if any, by the former owners of said mines, Ygnacio Manjarrez and Don Juan Castillo de Valle, with reference to the value of said mines, the richness and abundance of their ores, and the profits with which they were worked by them, previously to the sale or transfer of the same by them to yourself and D. J. Garth, as agents for said Abra Company?

Answer. The parties named in the question, Ygnacio Manjarrez and Don Juan Castillo de Valle, represented to the said Garth and myself, both before and after the purchase of said mines and property, that the said mines "El Rosario," "El Cristo," "La Luz," and its appurtenances, "El Arayan," with "Talpa" and "El Sanz" among its appurtenances, were among the most valuable of all the mines of Durango and Sinaloa, and they, said Manjarrez and De Valle, produced and exhibited to said Garth and myself their books, in which was written down and stated, with particularity, the profits with which they had worked said mines for a number of years pre-
227 ceding said sale, showing that the ores from said mines, which they had reduced, averaged them from six to ten marks per carga of pure silver, with an addition of about 10 per cent. of gold; and they represented to said Garth and myself, at the same time, that if said mines were worked on a larger scale, and with improved machinery, (such as we then contemplated erecting, and subsequently did erect on said premises,) they that they would produce much larger profits, and they stated that the metals which had reduced from said "El Rosario" mine had yielded them an average profit of eleven marks, or one hundred dollars per carga of three hundred pounds, in pure silver, with an addition of ten per cent. of gold; and during our examination of said mines, and immediately before we made said purchase, they blasted and took out an average lot of ores from said "La Luz" mine, and reduced the same in the presence of said Garth and myself, as tests of the value of said mine and its ores, and the same yielded, of pure silver, six marks per carga of three hundred pounds, and they represented the veins of ore in said mines as being inexhaustible in supply; which, from my subsequent examination, I believe to be true.

Question 19. State how you know who are the present stockholders of the Abra Company, as stated by you in your answer to question number 7?

Answer. Because assessments have been made by the company from time to time since the celebration of the treaty of July 4, 1868, under which this claim is presented, which assessments were made, *pro rata*, against the individual stockholders, for moneys with which to prosecute this claim for damages against the Mexican Government, and a correct list of the said stockholders, with the amount of stock held by each of them, together with the amount so assessed, and also giving the residence of each stockholder was furnished me by the secretary of the company, at each assessment, from 1869 up to the present month. Therefore, what I have before stated, that the stock of the company is still held by the original stockholders, with one or two exceptions of small amounts, as I have before stated, is entirely reliable.

Question 20. Are you now agent or attorney for said company, or have you any other interest, direct, contingent, or otherwise, than that which you have already stated, in the result of this suit?

Answer. No; no other interest than that stated; and I am not agent nor attorney for said company, nor for any party in interest.

(Signed) THOS. J. BARTHOLOW.

Attest: (Signed) HANNIBAL LOEVY.
" JOHN D. STEVENSON.

Subscribed and sworn to before me, this 23d day of June, 1874.

(Signed) ENOS CLARKE,
U. S. Commissioner, Eastern Dist. Missouri.

[Seal of U. S. commissioner—Eastern dist. Missouri.]

UNITED STATES OF AMERICA, EASTERN DISTRICT OF MISSOURI,
City and County of St. Louis, ss:

I, Enos Clarke, United States commissioner, in and for the eastern district of Missouri, do hereby certify that Thomas J. Bartholow, the witness who subscribes to the foregoing deposition, and who is personally well known to me as a prominent banker and citizen of the city of Saint Louis, and who is a man of responsibility
228 and of excellent character as a gentleman of truth and veracity, personally appeared before me, at the office of United States commissioner for said district, and, having been introduced as a witness for claimant in the above-entitled cause,

and having been first duly and lawfully sworn by me to state the truth in relation to the same, that in answer to the foregoing interrogatories suggested by counsel for claimant, and propounded by me, he deposed and testified as set forth in the foregoing deposition; and when concluded, that said deposition was carefully read over to said witness by me; and that he thereupon confirmed and ratified the truth of all the matters and facts therein stated by him; and attached his proper signature to the same, in my presence, and in the presence of the subscribing witnesses; and I further certify that said deposition was written down by John D. Stevenson, who acted as my amanuensis for this purpose, and that said John D. Stevenson thereupon testified before me that he had no interest, directly or indirectly, in said claim of the Abra Company; and that he is not agent or attorney for claimant, nor for any person interested in the same; and I also certify that I have no kind of interest, direct, contingent, or otherwise, in said claim, and that I am neither agent nor attorney for claimant, nor for any person having such interest; and I further certify that said witness, General Thomas J. Bartholow, being a well-known citizen of said city of Saint Louis, is publicly well known here as a credible witness, and that his statements are entitled to full faith and belief.

Given under my hand, and the seal of the United States commissioner for the eastern district of Missouri, this the 23d day of June, 1874.

(Signed) ENOS CLARKE,
United States Commissioner, Eastern District Missouri.

UNITED STATES OF AMERICA,
Circuit Court for the Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States, in and for the eastern district of Missouri, do hereby certify that I am well acquainted with the handwriting of Enos Clarke, esquire, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting.

And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States for the eastern district of Missouri, eighth circuit.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court, at office, in the city of St. Louis, in said district, this twenty-third day of June, in the year of our Lord eighteen hundred and seventy-four.

AUSTIN DRAKE, *Clerk.*
By H. C. GEISBERG, *D. C.*

[Seal of the U. S. circuit court—Eastern dist. of Missouri.]

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Samuel Treat, judge of the district court of the United States, for said district, do hereby certify, that in my opinion, Thomas J. Bartholow, the foregoing deponent, who is personally known to me, is a prominent banker in the city of St. Louis, in said district, and is a gentleman of unquestioned veracity and integrity, whose statements are entitled to the fullest confidence.

Signed on this, the 24th day of June, A. D. 1874.

(Signed) SAMUEL TREAT.

[Seal of the U. S. district court—Eastern dist. Missouri.]

229 *In the matter of the claim of La Abra Silver Mining Company versus The Republic of Mexico, pending before the American and Mexican Joint Commission at Washington, D. C. Rebutting evidence.*

Deposition of Sumner Stow Ely on behalf of claimant.

STATE OF NEW YORK, *County of Kings, ss:*

Before me, Calvin E. Pratt, a justice of the supreme court of the State of New York, at the chambers of said court, in the county court-house, in the city of Brooklyn, in said county, on the twenty-fourth day of September, A. D. 1874, personally appeared Sumner Stow Ely, who is well known to me personally, and who having been introduced as a witness on the part of the claimant, and sworn by me according to law to speak the truth, the whole truth, and nothing but the truth, in the above-entitled matter, deposes and says as follows, to wit:

My name is Sumner Stow Ely; I am forty-eight years of age; I was born in the village of Clarksville, in the county of Otsego, in the State of New York, and have always resided in said State; I now reside at No. 54 West 10th street, in the city of New York, and have resided in said city for many years; my occupation is that of an attorney and counselor at law, and my law offices are at No. 4 Pine street, in

said city of New York, and at No. 44 Court street, in said city of Brooklyn, and I have had a law office in each of said cities for the fifteen years last past.

I know La Abra Silver Mining Company, the claimant in this cause. Prior to the organization of said company, and to the departure of David J. Garth and Thomas J. Bartholow for Mexico in the spring of 1865, I was consulted by them and other gentlemen, who subsequently organized and became stockholders in said company, as to the formation of such company under the general mining act of the State of New York, in the event of the acquisition of the mines and property in Mexico, which said Garth and Bartholow were going to Mexico to examine, and to purchase, if the representations as to their desirability proved true upon examination. After the return of said Garth from Mexico, reporting a purchase, by himself and said Bartholow, of said mines and property, I drew the certificate of incorporation of said company, and, after it was duly signed and acknowledged, caused it to be filed in the office of the clerk of the city and county of New York, and a duplicate thereof in the office of the Secretary of State for the State of New York, whereby said company became and was duly incorporated under said act; and subsequently I also drew the deeds of conveyance, whereby said Garth and Bartholow conveyed said mines and property to said company; from the first inception of said company to the present time, I have been, and am the attorney and counsel of said company at the city of New York, where its general office is located, and my acquaintance is intimate with nearly all of its stockholders; and by these means I know well said company, its business transactions, and the motives which lead to and the means employed in its creation.

The gentlemen who originated said company were merchants and bankers of high social and business repute, and of abundant pecuniary means, and all those who became stockholders in said company were of like character, and nearly all of them in the same business. Said company was formed for the sole and express purpose of carrying on a legitimate mining business in Mexico, as an investment of capital, and
230 in the firm conviction of the parties forming it derived from their general business knowledge and the representations of persons familiar with Mexican mining and the mines in question, and the personal examination made by two of their own number (said Garth and Bartholow), that said business would, for a long series of years, yield immensely profitable returns upon the capital invested therein. At the time I drew said certificate of incorporation, I inquired of the gentlemen who were forming said company, whether their object was to derive a profit by sales and speculations in the company's stock, or by the returns of the business prosecuted in a legitimate way as an investment for capital, at the same time informing them that if the former was their object their course would be (if they followed the usual method when such an end was in view), to fix the amount of the capital stock at a very large sum, and then, to issue the greater part of it to said Garth and Bartholow in payment for the conveyance to be made by them to the company of said mines and property, a correspondingly large price being put upon the same for that purpose; but that if the latter was their object, then their course would be to fix the amount of the capital stock at the lowest sum they thought would be sufficient to pay for the mines and property on their actual cost on the purchase by said Garth and Bartholow, and to make the intended improvements and carry on the business, and then to issue the stock for money. Said gentlemen instantly replied that said company was not to be formed for any stock or other speculative purpose whatever, but as a legitimate and permanent business investment of capital, and they decided that as all the company's expenditures must be in gold, not even the currency of the United States, but gold only should be accepted by the company in payment for its stock, and at its par value. Accordingly, the company was organized and its business conducted upon a gold basis, and purely as a business investment; and in its certificate of incorporation the term of its existence was limited to fifty years, the longest time allowed by said act, and its capital stock fixed at the sum of three hundred thousand dollars, which the parties then supposed would be adequate for purchase of the mines and property, and the construction of the improvements, and the carrying on of the business on the large scale contemplated by them. And so sanguine were the originators of said company of the success of the undertaking and of its very profitable character, that they determined the stock should be taken only by themselves and such of their personal friends as they were willing should share with them in the benefits of the enterprise.

For these reasons the stock of the company was never put upon the market for sale, and the stockholders of the company were relatives, or particular personal friends of each other, and with the exception of three instances of very small amounts of stock which the original holders, by reason of adverse circumstances, were unable to retain, the stockholders of said company at the time of filing the memorial in this cause, and at this time, are the same persons to whom the stock was originally issued by said company. All the stockholders of said company are citizens of the United States of America; all its trustees are such citizens and stockholders; a majority, and all but one of said trustees being citizens of the State of New York, and that one, a citizen of the State of Missouri.

Said company was formed, its expenditures were made, and its business conducted in the most perfect good faith, for the purpose of carrying on a regular and
231 continuous mining business in Mexico, relying solely upon the products of its mines for reimbursement and profit, and in the fullest belief of its originators and stockholders that said business would prove highly remunerative, and they had ample means to conduct it to a successful issue; but the expulsion of the company from its mines and property in March, 1868, utterly ruined the business of the company, rendered its stock entirely valueless, and prevented the company and its stockholders from receiving any return whatever for the expenditures made by them in said enterprise.

Said company never sent an agent or commissioner to Mexico, from the United States or elsewere for the purpose of examining into the enterprise on behalf of the company; the only persons sent from the United States by said company were Julian A. de Lagnel, and subsequently Charles H. Exall, and they were sent as superintendents, and for the purpose of discharging the duties of that position.

Before the organization of the company, and in contemplation thereof, should the mines be purchased, said Garth and Bartholow, on behalf of themselves and the other parties who intended to be interested in said company, if formed, went to Mexico, as I have already stated, but neither of them returned to the United States before making the purchase. They were empowered to purchase immediately, if they thought best, and without returning or waiting to communicate with the other parties, and if they purchased they were to take and hold title for the use and benefit of the company, until it could be formed and a proper formal transfer made to it. They purchased, taking the titles, of necessity, in their own names, because no company was then in existence, and then, but not before the purchase, said Garth returned to the United States, and said company was thereupon formed, said Bartholow remaining until the following year, (1866,) and meanwhile holding possession for the use of the company, and conducting business in its name and, as its superintendent, until another suitable person as superintendent could be selected and sent forward to Mexico. Such a person having been selected and sent forward, said Bartholow ceased to be superintendent, and returned to the United States in the summer of 1866, but could not come to the city of New York, where said Garth resided and said company's office was located, until October, 1866, for which reason the formal documentary transfer of said mines and property by them to said company, could not before then be conveniently made, and it was at that time made, though the company paid for the same immediately upon its organization, and was regarded as the owner thereof from that time by all the parties.

Said Garth and Bartholow did not, nor did either of them, in or by means of the purchase and transfer of said mines and property, make any personal speculation, for the company paid for the same precisely the sum, and no more, that the sellers received for the same, through said Garth and Bartholow, and the moneys for such payment by the company were obtained from its stockholders for stock issued to them at its par value, in gold, and said Garth and Bartholow being among the largest of such stockholders. They have always been warm advocates and supporters of said company. Mr. Bartholow twice increased, by taking and paying for additional stock, the amount of stock in the company which he originally took, and Mr. Garth induced his brother and cousin to become large stockholders in said company, and they each have advanced large sums of money to the company when its business required it.

Any deception by them in the matter upon the capitalists or other parties in in-
232 terest would have been an immediate and equal injury to themselves; and it is certain that they acted in the matter honestly, and in good faith towards all parties.

I have carefully read a translation of the letter of Jesus Torres, dated at Durango, July 30, 1872, and of the oaths or depositions as to the same, made by said Torres, and by Francisco Acosta, before Geronimo Lido, a juez de paz, at said Durango, July 31, 1872, which letter and depositions are filed as a part of the defensive testimony in this cause; and every statement in that letter, which in any wise conflicts with the statements hereinbefore made by me is untrue.

I am not the agent or attorney of any person interested in the claim of said company, which is being prosecuted in this cause; I am not the agent of said company; I am its attorney at the city of New York, for its general business, as I have already stated, but it has special attorneys at Washington for the prosecution of said claim; and I have no interest whatever, direct, contingent, or otherwise, in said claim.

SUMNER STOW ELY.

Subscribed and sworn to before me this twenty-fourth day of September, A. D. 1874.

C. E. PRATT, *J. S. C.*

UNITED STATES OF AMERICA,
State of New York, County of Kings, ss:

I, Calvin E. Pratt, a justice of the supreme court of the State of New York, do hereby certify that Sumner Stow Ely, whose deposition is herein above written, attended before me on the twenty-fourth day of September, 1874, at the chambers of said court in the county court-house in the city of Brooklyn, in said county of Kings, and was publicly and duly sworn, according to the laws of the United States of America, and of the State of New York, to tell the truth, the whole truth, and nothing but the truth, in the above-entitled matter, and thereupon he deposed and testified as hereinbefore set forth; that said deposition was carefully read to said Sumner Stow Ely by me, and that he thereupon signed the same in my presence.

I do further certify that said deposition was taken by me in the city of Brooklyn, in the county of Kings, and State of New York, in the United States of America; that I am competent to take depositions by the laws of said State, and the United States; that I have no interest in the claim to which the testimony of said Sumner Stow Ely relates, and that I am not the agent or attorney of said La Abra Silver Mining Company, claimant in the above-entitled cause, nor of any person having such interest.

I do further certify that said deposition was reduced to writing by Henry E. Metcalf, in my presence, who has no interest, and is not the agent or attorney of any person having an interest in said claim.

And I do further certify that I know the said Sumner Stow Ely, the above-named affiant, as a man of good character for truth and veracity, and I hereby certify to the credibility of said Sumner Stow Ely, and that his deposition is entitled to full faith and credit.

DATED, *September 24th*, 1874.

C. E. PRATT,
Justice Supreme Court State of New York.

233 STATE OF NEW YORK,
City of Brooklyn, County of Kings, ss:

I, George G. Herman, clerk of the county of Kings, and clerk of the supreme court of the State of New York, in and for said county of Kings, (said court being a court of record,) do hereby certify that Calvin E. Pratt, whose name is subscribed to the foregoing deposition and certificate, and thereon severally written, was, at the time of taking such proof or deposition and signing said certificate, a justice of said supreme court of the State of New York, and authorized to take such deposition and sign said certificate, and his acts as such justice are entitled to full faith and credit, and that said signatures of said justice are genuine

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court, this twenty-fifth day of September, A. D. 1874.

[KINGS COUNTY SEAL.] GEORGE G. HERMAN, *Clerk.*

UNITED STATES OF AMERICA.

BY JOHN A. DIX, GOVERNOR OF THE STATE OF NEW YORK

It is hereby certified that George G. Herman was, on the day of the date of the annexed certificate, clerk of the county of Kings, in said State, and duly authorized to grant the same; that the same is in due form, and executed by the proper officer; that the seal affixed to said certificate is the seal of said county; that the signature thereto of the said clerk is in his proper handwriting, and is genuine; and that full faith and credit may, and ought to be given to his official acts.

[The great seal of the State of New York. Excelsior.]

In testimony whereof, the great seal of the State is hereunto affixed.

Witness my hand at the city of Albany, the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and seventy-four.

JOHN A. DIX.

Passed the Secretary's office the 26th day of September, 1874.

DIEDRICH WILLERS, JR,
Secretary of State.

In the matter of the claim of La Abra Silver Mining Company versus the Republic of Mexico. Rebutting evidence.

Deposition of Alonzo W. Adams, on behalf of claimant.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Before me, Edward C. Ingersoll, United States commissioner, in and for the city and county of Washington, District of Columbia, on this 2d day of November, 1874,

personally appeared Alonzo W. Adams, a citizen of New York, and who, having been introduced as a witness on the part of the claimant in the above-entitled matter, and sworn by me in accordance to law to tell the truth, the whole truth, and nothing but the truth in relation thereto, deposes and says as follows, to wit:

My name is Alonzo W. Adams; I am forty-eight years of age; I was born in
234 the township of Caroline, Tompkins county, in the State of New York, in the United States of America, and am and always have been a citizen thereof, and I now reside, and for nineteen years last passed have resided in the city and State of New York.

I know La Abra Silver Mining Company, the claimant in this case, and have been in the employ of said company as their attorney, for the purpose of collecting the evidence in support of their claim in this case, and as such attorney, and for that purpose have been twice to various places in the States of Sinaloa and Durango, in Mexico, and among others to Mazatlan, San Ygnacio, San Dimas, Durango, the capital, Tayoltita, and the haciendas and mines of said company near Tayoltita—the first time in the year 1870, and the second time in the year 1872.

I have carefully read translations of all the depositions which have been filed as defensive testimony in this case, and have said translations now before me, and I know well the contents of all of them, and particularly of those of them which purport to have been given at San Dimas, before Gil Ruiz, by Ygnacio Manjarrez, February 19, 1871; and at the same place, before Cipriano Quiroz, by Maria Cecilia Jimenez, (without date,) by Bartolo Rodriguez, July 25, 1872; by Aquilano Calderon, and Gil Ruiz, July 29, 1872; by Guadalupe Soto, August 6, 1872; and by Dionisio Gutierrez, August 8, 1882.

I am the person referred to throughout these alleged depositions, and particularly in those above specified, as "Alonzo W. Adams," and as the "American General," and sometimes merely as "the General," and "called General." Francis F. Dana is the person referred to in said depositions as "Mr. Dana." Said Dana was an American citizen, but when I went to Mexico, in 1870, he resided at Mazatlan, and it was well known that he had resided in Mexico for many years, and had been a lieutenant colonel of cavalry in the Liberal army, under President Jaurez, and, as said Dana understood and spoke Spanish fluently, and was a reliable interpreter and translator, well acquainted with the Mexican people, and was familiar with the country, I employed him as interpreter, and as captain of my guard, and he went from Mazatlan with me as such, to the various places in Mexico which I visited for the purpose aforesaid, in 1870. I am the only person who ever collected, or endeavored to collect, in Mexico, the evidence for said company in this cause, and said Dana and myself are, evidently, the "two Americans" meant by the judge at San Dimas, in the 7th question in the said deposition of Ygnacio Manjarrez, and in the 2d question in said alleged deposition of Maria Cecelia Jimenez, which, in brief, ask if two Americans did not offer Santiago Granger $5,000, with which to buy witnesses in this case. Neither of the witnesses, as it appears by said depositions, had the hardihood to answer said question in the affirmative, and it was, evidently, an unworthy attempt to suborn said witnesses, for the intimation conveyed by said question, clearly showing the answer desired, that such an offer of money was made, is not only false, but there was no kind of groundwork in truth upon which to base such a question.

I have seen said Maria Cecilia Jimenez; I know very little of her, but with the exception that she was at Tayoltita during my visit there, and at the hacienda of the Candalaria Company, near San Dimas, at the time referred to in the said deposition, purporting to have been made by her—every statement contained in that deposition is false, and is either wholly invented, or falsely reported, and I have reason to believe the latter to be the fact.

235 I do not know that I ever saw said Dionisio Gutierrez, and every statement contained in the deposition, which I have mentioned, purporting to have been made by him before said Judge Quiroz, on the 8th of August, 1872, is wholly destitute of truth—a mere invention.

I did not draw or take, by myself or otherwise, at Tayoltita or elsewhere, the deposition or testimony of any person, nor did I ever attempt to do so; nor did I, or any person for me, or for claimant, ever instruct, advise, or suggest to any person what he should say or testify to, and all statements or intimations to the contrary contained in the said alleged depositions—(and in any other, if any other contain such statements or intimations,) are wholly false. What I did do is this, viz: on the evening of the day I reached said hacienda, San Nicolas, about the last of April, 1870 (said hacienda then being occupied by said judge, Guadalupe Soto, with his family, and he then working the mines of the Abra Company,) a number of the workmen, among them said Bartolo Rodriguez and Aquilino Calderon, came down from said mines to said hacienda, they having been sent for by me, and not by James Granger, as it is falsely stated in said alleged deposition of Calderon, and I questioned them; and those of said miners who had worked for claimant, then severally and voluntarily stated what they knew about the depredations which had been committed upon the

company's property by the military, and they said they knew of, and witnessed some of the unlawful acts of the civil and military authorities, which had forced the company to abandon their mines and property, and, as Colonel Dana interpreted to me their statements, I took down, in pencil, and in English, brief memoranda of what they said, and solely for the purpose of knowing who of said workmen had been in the employ of said company, and which of them knew facts of sufficient consequence to justify me in asking them to go so far as San Dimas to testify. Aquilino Calderon was not contradicted or questioned by James Granger, as is stated in the alleged deposition of said Calderon, nor was he, or any of said workmen contradicted, prompted, or interfered with in any way by said Granger, nor by Mr. Dana, myself, or any one else; nor was Bartolo Rodriguez, as is stated in his alleged deposition, told by said Granger or myself that "we wanted some depositions in which we were interested in behalf of the company;"—no such statement was ever made.

The simple fact of my having taken brief notes of what said employees knew and offered to testify to, is the only basis there was for the false statements contained in said alleged depositions for defense, which said deponents either purposely made, knowing them to be untrue, or through their ignorance were led to make, that I had taken such depositions at Tayoltita, or elsewhere, without the aid of a magistrate, and without witnesses, all of which is simply absurd—for no such papers have ever been offered by claimant in evidence before the Commission.

I did not pay, offer, or promise, nor did "Santiago" (James) Granger, "Mr. Dana," or any other person for me, or for said company, pay, offer, or promise any money or other thing to said Judge Guadalupe Soto, to any of said workmen, or to any other person, as a gratuity, reward, consideration, or inducement to become or be a witness, or to testify in this cause, nor did I ever offer or furnish a mule, nor the use of a mule to said Soto; and every statement to the contrary, in terms or substance, con-
236 tained in the said alleged depositions of said Jimenez, Rodriguez, Calderon, and Soto, (and in any other, if any other contains such statement,) is wholly false.

All that they, or Judge Quiroz had to justify the making of such statement or report, is the following: Judge Soto required of me, as a condition of his permitting the workmen, then in his employ at claimant's said mines, whom I desired should testify, to go to San Dimas and give their testimony, that I pay their daily wages, which I think he said was one dollar and fifty cents per day each, and which he said would be necessary for their expenses; and consented, it seeming to me to be both reasonable and proper, San Dimas being about five leagues from Tayoltita, and the road from the one place to the other being over a rugged and precipitous mountain.

It is not true as stated over the name of said Guadalupe Soto, in one of his said depositions, that I, "foreseeing that his deposition would not be favorable, did not wish him to testify;" but on the contrary, he was then residing on said premises with his numerous family, in full possession of said company's mines, and said hacienda San Nicolas, and was working the company's mines, and he claimed that he, being the local judge of that mineral district, had the best right to do so, and he unreservedly and proudly avowed it as his present and past opinion that the mines of Mexico ought to and did belong only to Mexicans, and that all Americans ought to be driven out of the country; he admitted when asked by me, that he, as local judge, had interfered with the company's working of their mines, and the conduct of their business, but claimed that he had rightfully done so by virtue of the orders of his superiors in authority; and he stated and admitted many other like facts which were very material to the company's case, and made me desirous that he give his deposition. He was bold, outspoken, and evidently proud of his hostility to Americans, and his acts towards said company, and I asked him if he would go over to San Dimas, and state before Judge Milan what he had just said to me in relation thereto, and he replied that he would; and he then repeated that the mines of Mexico belonged only to Mexicans, and he declared, in a boastful manner, that he was willing to proclaim his principles and purposes, on that subject, before any court, or before the whole world; but when he reached San Dimas, to which place he had come with me and with the workmen from Tayoltita to testify, he and said superior judge, Anastasio Milan, had a private conference in the rear part of said Milan's store, and said Soto then came and told me, through my said interpreter, Colonel Dana, that Judge Milan did not wish him to give his deposition in this case, and he had become satisfied that it was impolitic, if not impossible for him to do so there at San Dimas, and expressly requested me not to call him as a witness there, as he said he was going to Mazatlan in the course of two weeks, where he could make a deposition with less ill effect to himself, and promised to do so if I would not insist upon his testifying at San Dimas.

This request and promise, and the occurrences a few days after in the court before Judge Milan, which are narrated in the depositions of said Dana and Granger, are the only reasons why I did not then and there insist upon taking the deposition of Judge Soto, at San Dimas, in May, 1870; and any statement in his said alleged deposition, or any other deposition to the contrary, is wholly untrue.

Said Soto did not come to Mazatlan and make his deposition there, as promised, though I remained there after the time fixed by him, and as long as I could,
237 and was expecting him from day to day, until it was necessary for me to leave Mazatlan for the United States, or otherwise the said facts and particulars, and the opinions, purposes, and conduct of Judge Soto would have been embraced in the deposition of Colonel Dana, who thought, as he said, that Soto would testify to the facts himself, which he preferred, and that I would eventually secure Soto's statement; and I have never seen said Dana since I left that Republic in 1870, and never had an opportunity since that time to retake his deposition; and on my return to Mexico, in 1872, I saw said Soto at San Vicente, where he resided, temporarily, (in May of that year,) two or three leagues from San Dimas, but he then denied some of his previous statements, and refused to give any deposition on behalf of said claimant; and I am satisfied that, after his said interview with said Judge Milan, he never intended, at any time, to give his deposition for claimant, and that the intent and design of his conduct at San Dimas, in May, 1870, was, under cover of seeming to be willing to testify, and to permit his workmen to do so, the more effectually to avoid it himself, and prevent the others from testifying.

It is not true, as stated in Aquilino Calderon's alleged deposition, that Bartolo Rodriguez and himself were the only workmen who came to testify; on the contrary, there were a number, at least five or six others who came with them, said Soto and myself, from Tayoltita to San Dimas, in May, 1870, to testify in this case, all of whom had, on the previous evening at said hacienda, in the conversation which I have mentioned, stated facts which it was very important for the interests of said company in this cause to have shown; but when they got to San Dimas, said Judge Milan also talked with them in his private room, in the rear of the store, and the result was that all of them, except Bartolo Rodriguez and Aquilino Calderon, left San Dimas during the same night, and, although I made diligent search for them for two days, I could not learn where they had gone, and said Rodriguez and Calderon were the only two of the workmen who were not frightened away before Judge Milan opened his court to take, or rather to defeat the taking of depositions, which, according to my recollection, was some two or three days thereafter;—and on my return to San Dimas and Tayoltita, in 1872, I made inquiry at both places to find the rest of said workmen, who went to San Dimas in 1870 to testify, but disappeared as I have stated, but I could not ascertain where any of them were; and it would have been a useless search if I had found them, for Mexicans were then afraid to testify before a Mexican court.

Judge Anastasio Milan, did, in effect, refuse to take the depositions of witnesses for claimant at San Dimas, in May, 1870, as stated in the depositions filed in this cause, which were given before Isaac Sisson, United States consul at Mazatlan, by James Granger, May 23d, 1870, and by Francis F. Dana, May 27th, 1870; and I reaffirm, and make a part of this deposition, all the facts contained in those depositions, which relate to the acts, proceedings, and occurrences by and before said Judge Milan in his court-room, in May, 1870, where Aquilino Calderon and Bartolo Rodriguez were there to give their evidence, all of which matters were interpreted to me by said Granger and Dana, or one of them, at the time—and I will add thereto, a few words, according to the best of my recollection—which, on that point, is not easily obliterated; that when said Calderon attempted to testify, there was a crowd of people outside, about the doors and windows of said court-room, hooting and yelling, and the court-room itself was full of the local authorities and people, whose menacing
238 looks and gesticulations towards said Calderon, said Rodriguez, and myself, were unmistakable, and they were so demonstrative and violent, that even Colonel Dana, who had lived amongst said people so many years, told me I was in personal danger, and the said Judge Milan made no effort to suppress said insulting demonstrations, and by his silence, if not otherwise, encouraged them.

The witnesses, Calderon and Rodriguez, were very much frightened, evidently in part by the demonstrations of the spectators which I have mentioned, and partly by the acts of Judge Milan, and particularly the menacing way in which he cautioned them as to the evidence they were about to give. James Granger was present as interpreter of said proceedings between the court and myself, by the appointment of the court, and with my consent, but when the witness Calderon, through fright or other cause, swore that he had never worked for the Abra Company, and knew nothing about the company, said Granger, who had been clerk, or book-keeper for said company, and knew that such answer was untrue, stated the fact to the judge, and suggested that the witness could not have understood the question, and asked that it be repeated, said judge, with violent language, ordered said Granger and myself out of the court room—though he subsequently withdrew the order as to me. Before retiring from the court-room, said Granger, at my request, asked said judge if he would take and certify the depositions of the witnesses as required by the rules of the Commission, under the treaty, but the judge refused, as is stated more fully in Granger's said deposition. After said Granger withdrew from the court-room, the said Frances

F. Dana, my interpreter, having been a lieutenant colonel in the Mexican service, and formerly a personal friend of Judge Milan, came to my aid, and, at my request, he again asked the judge to repeat the question, so that the witness might surely understand it, and also again asked him if he would take the depositions in accordance with said rules of the Commission, and obey said treaty. and said judge again refused, all of which is, I believe, fully stated in said deposition of Francis F. Dana; and said Judge Milan then ordered said Dana and myself out of the court-room, but again revoked his order as to myself, and the said Dana immediately withdrew. It being evident that the witnesses could not, through fear, make a truthful statement, and that the judge was determined they should not, and he having refused to regard the treaty, or to take and certify the depositions as required by the rules of the Commission, and the only persons who could interpret the proceedings to me, having been driven by the judge out of court, I had no alternative but to abandon proceedings that were destitute of all semblance of justice or fairness, and all hope of having depositions taken in that district, and I left the court-room, and went direct to the hacienda of Ralph, or "Rafael" Martin, and thence to Mazatlan, and did not return to San Dimas until 1872. It is not true that said Calderon completed his deposition before said judge, or that said Rodriguez testified at all, unless the former was done, and the latter testified after I had abandoned said proceedings, and left;—and if their depositions were taken, I never had, saw, or knew what became of either of them;—and if they severally deposed to what said alleged depositions contain, as reported by said Quiroz, now filed by defense,—then they deposed, in all essential particulars, directly opposite to what they had voluntarily stated to be the facts, in the statements made by them at said hacienda San Nicolas, only two or three days before, to which
239 I have already alluded, and which facts I am satisfied they would have deposed to, had they not been tampered with and frightened by the authorities, after reaching San Dimas;—and each and every statement in the alleged depositions heretofore mentioned, purporting to have been made by said Rodriguez, Calderon, Soto and Gil Ruiz, or in any other deposition, contrary to what I have here stated, relative to the taking of depositions by and before said Judge Milan, is wholly untrue.

It is not true, as will be hereinafter shown, that the deposition of Matias Avalos, filed on behalf of the claimant in this cause, was "taken extra-judicially," as he is reported by Judge Quiroz to have said, in his alleged deposition, in July, 1872, filed on behalf of the defence; nor is it true that his said deposition, or the depositions of Juan Francisco Gamboa, José Maria Loaiza, James Granger, or of any other person, filed on behalf of claimant, was "extra-judicial," as is stated in the directions to the judge of first instance of the district of San Dimas, dated Durango, July 8th, 1872, by José M. Hernandez, the Mexican district attorney, and filed as a part of the defensive evidence in this cause.

Said Granger and Avalos resided in the town and district of San Dimas. The demonstrations in and around Judge Milan's court-room, and by said judge himself, which I have related, satisfied said Granger that it would be dangerous for him to attempt the giving of his deposition there, and Judge Milan had, in effect, refused to take depositions for claimant, as I have already stated, and, of necessity, witnesses had to give their depositions elsewhere, or not at all; and said Granger thereupon told me that his business would call him to Mazatlan, a few days thereafter, where he could give his deposition before the United States consul, in safety, which he subsequently did do, and the same is now on file in this case.

As for said Avalos, his deposition on behalf of the claimant, would not have been given at San Dimas, had Judge Milan been willing to take it, for the reason, that I did not know while I was there, nor until after I had returned to Mazatlan from San Dimas, nor until Avalos himself had come to Mazatlan, (which he did as an escort for some one,) that he had ever been in said company's employ, or that he knew any material fact relating to the claimant's case. His deposition was therefore given at Mazatlan, for the additional reason that he happened to be there temporarily, where I was when it first came to my knowledge that he had worked for claimant, and knew facts pertinent to this case, and his deposition, given in May, was, by the request of Avalos, himself, and with the consent of the United States consul before whom it was taken, written down by ex-Governor Carlos F. Galan, as interpreter and translator for said Avalos, and the same was taken lawfully, openly and fairly, in the office of the United States consulate at the port of Mazatlan, and his statements were wholly given in answer to questions propounded by the consul, and the assertions which are made to appear in his said alleged deposition of July, 1872, filed on the part of the defence in this case, that he made an "extra judicial statement at the National Hotel," in Mazatlan, and was there questioned "by an American called General," and "by William N. Camacho," and that "James Granger agreed to pay him twelve dollars on the General's account," but did not, and that "said General gave it to him last May," are, and each of said statements is wholly untrue, and without the slightest foundation in fact; and the whole of said alleged deposition has been explicitly denied, condemned, and repudiated by said Avalos himself, in a subsequent depo-

240 sition given by him in this case, September 10, 1872, and now on file before the Commission; and as to the giving of said last mentioned deposition, I was at Mazatlan, in September, 1872, and while there, the said Matias Avalos came to Mazatlan in the employ of the Durango Mining Company of San Dimas, with Charles B. Dahlgren, the superintendent of said company, in attendance upon his sick wife and child, then en route to the United States. I had no previous knowledge or intimation that either Captain Dahlgren or said Avalos was coming to Mazatlan, but while they were there, I accidentally ascertained from a Mexican companion of said Avalos, who also came from San Dimas in the employ of said Durango Company, that said Matias Avalos, and other Mexicans had been compelled to go before said Judge Quiroz, the previous July, and there to make, or witness the making of said alleged depositions by said Quiroz, de la O, for the defence in this case, one of which was subsequently exposed and repudiated by the witness himself as aforesaid; and these facts came to light at Mazatlan, and Avalos was requested by the consul to make his affidavit to all the facts in the case, and by reference to his deposition it will be seen by the certificate of the consul, and the deposition of the interpreter, that it was taken properly and lawfully by the consul; that the interpreter who transcribed and witnessed said deposition for the consul on that occasion, Hernando Diaz Peña, who was then, and is yet a teacher of languages, and principal of a college at said port of Mazatlan, was chosen by said witness, Avalos, as he had chosen ex-Governor Carlos F. Galan, in May, 1870, for the same purpose, in transcribing his first deposition in behalf of claimant, all of which was done in the presence of, and under the direction of said United States consul, in every instance without interference, or any attempt at interference by me, or by any one else, and I here state positively that I never saw nor heard of any such person as "William N. Camacho," and it is meanly false that said imaginary person "Camacho," or that any real person, "at the National Hotel," at the consulate, or elsewhere, ever dictated or interfered, in any way, with the terms, substance, or writing down of either of the two depositions so given before the said consul, by the witness Matias Avalos, or by any other witness for claimant in this case. No person acquainted with the high character of Isaac Sisson, the United States consul at Mazatlan, and with his prudent and precise manner of doing business, and especially in taking and sealing up testimony, would ever attempt to have depositions improperly or unlawfully taken before him, even though the agent or attorney of the party in interest were unprincipled enough to desire it. Said consul was expressly *ordered* to take said depositions, by the State Department of the United States, which order is dated at Washington, December 13th, 1869, and transmitted through Minister Nelson, at Mexico, whose instructions to said consul, Isaac Sisson, Esq., were shown to me by him, in said consulate at Mazatlan, in March or April, 1870, the material part of which is as follows:

"LEGATION OF THE UNITED STATES,
"*Mexico, January 6th*, 1870.

"SIR: You are hereby instructed to take and verify all proofs in support of claims against Mexico, to be presented to the Joint Commission at Washington," &c., &c.

I have copies of said orders and instructions, at length, which I have received from the files of the State Department, and, it appears, the Secretary of State was
241 moved to order said instructions, by complaints from United States consuls in Mexico, of the difficulties in taking such testimony before Mexican authorities, which are also on file at said Department.

Each and every deposition taken in Mexico on behalf of the Abra Company, claimant in this case, was taken honorably and lawfully, and wholly by the consul or other magistrate certifying to the same, with the interpreter selected by the witness himself, in every instance; while, on the contrary, every Mexican official in Sinaloa and Durango, to whom my business made it necessary for me to apply for certificates, copies of title papers, and to take depositions in this case, with the honorable exception of Pedro J. Barraza, judge of the supreme tribunal at the capital of Durango, who discharged his duty honorably and promptly—either refused my application, outright, or granted it only after expensive and vexatious delays, intrigues, and obstructions, such as were well calculated to defeat the object in view, as I was thereby prevented from securing the depositions of many of claimants' former employees in the mines, and elsewhere, whose testimony was material in support of this claim.

In May, 1872, I applied to said Cipriano Quiroz, judge of 1st instance, at San Dimas, and to Arcadia Laveaga, then the official prefect, or "gefe" of that district, to certify officially to the correctness of their own unofficial signatures, made by them as witnesses to certain title papers of the claimant in this case, and to the signatures of other officials, the correctness of which signatures they admitted they knew. My said application was written out in Spanish, to which each of said officials replied, verbally, that he would sign no papers, nor take official action of any kind, nor attach his name officially to anything, without instructions from his Government, and each claimed to have special instructions not to sign anything officially, if applied to, with-

out permission from the supreme authorities at Durango, and that his orders from the Governor were, that he should not grant any certificate, nor any petition whatever, without previously sending it to the Governor for approval, and therefore he could not accede to my request. This prevented me from making any petition to said authorities at San Dimas, to take depositions before either of them, on behalf of claimant, as each of them had informed me, in advance, that no petition would be entertained without special orders from the Governor, who was at Durango, nearly two hundred miles distant, over the Sierra Madre mountains, traversable only by terrible mule paths; all of which facts effectually prevented my taking testimony in that district, as they were the only authorities there, before whom I could have taken testimony, and each of said officials well knew that if said instructions could be obtained at all, it would require from one to two months to return them there.

The titles were certified at Durango, after an expensive and unnecessary delay there of a number of weeks, during which time bills for upwards of $200 were made out against me, by a Mexican agent there, for searches, and for procuring the signatures of his friends, (as he called the Governor and other officials at said capital,) to the original duplicate denouncements and deeds to said mines and haciendas of the Abra Company.

While at San Dimas, in May, 1872, I ascertained that said James Granger, one of the witnesses for claimant, had been summoned by said Judge Cipriano Quiroz, a number of times, to appear before him and give his testimony for defence, and that he had been compelled to sign two depositions before said Quiroz, on the part
242 of the defence in this case; said Granger then and there called my attention to the fact that from the manner of putting together the depositions, by officials there, the sheets of paper containing the statements of a witness, could be easily displaced, and others introduced containing such statements, or interpolations as they chose to report, except upon the last sheet, upon which is written the signature of the witness; and in calling my attention to this loose manner of putting depositions together, and forwarding them from San Dimas, he protested that if said depositions, over his signature, as reported by Judge Quiroz, contained anything contrary to, or inconsistent with his declarations in the depositions he had given in support of this claim, before Consul Sisson, in May, 1870, that it was a false report of his testimony by said Mexican judge. I then asked him to make a deposition to that effect, which he was willing to do, and would have so testified, but he could not leave his business and go to Mazatlan for that purpose, and he could make no deposition of the facts before said Judge Quiroz, and the United States consul there, Charles B. Dahlgren, could not act officially, as he had not yet received his *exequatur* from the Mexican Government, and there was no authority in San Dimas before whom he could testify. I subsequently ascertained, from said Consul Dahlgren, at Mazatlan, in September of the same year, 1872, that his *exequatur* was not received until some time after I had left the district of San Dimas—not to return there again—and said Dahlgren, at that time, complained of the neglect of the Supreme Government at Mexico, in withholding his *exequatur* so long, which he thought was done purposely, to prevent the taking of testimony before him in that mining district, in support of the said American claims.

It is not true, as stated in said report of Cipriano Quiroz, in said alleged proofs of defence, that in any part of the month of July, 1872, there was "no mode of conveyance to San Ygnacio at the time, either by mail or through private sources, to forward the requisitions decreed by the act of the 15th instant," July, 1872, which "decree" was an order from José Ma. Hernandez, of Durango, then the Mexican district attorney, to said Cipriano Quiroz, judge of first instance at San Dimas, to take, for defence, the depositions of said Francisco Gamboa and José Ma. Loaiza, of said district of San Ygnacio, Sinaloa, and of said Judge Anastasio Milan, of San Dimas.

There was nothing to prevent the Mexican authorities from taking said depositions, if they had chosen to do so. I was in said district, and in various parts of said States of Durango and Sinaloa, at the very time said Quiroz was taking depositions in this case, and I knew all that took place there, of public notoriety and importance, from about the twentieth of April, 1872, the time of my arrival at Mazatlan, up to about the middle of January, 1873, the time of my departure from the same place, and from that Republic.

The rebels, or "pronunciados," after having possession of Mazatlan, and a part of Sinaloa, for a few weeks, were driven out, and the legitimate authorities under President Juarez, re-established in full control of that district and State, and of the State of Durango, about the middle of May, 1872, by the army of General Rocha, and I know that the roads were open, and the mails not obstructed, but passing as regularly as usual in that country, between said points, the towns of San Dimas and San Ygnacio, from the middle of May, up to about the 1st of September, 1872, when the rebels again took and held possession of some parts of said States, for a few weeks only, and then finally surrendered to the legitimate authorities under President
243 Lerdo de Tejada, which last named authorities have ever since that time held

possession of the same. In the month of May, 1872, I saw said Gamboa, and Loaiza, at their respective residences in the district of San Ygnacio, in which district they resided permanently, with their families; and I also saw, in the same month, said ex-judge, Anastasio Milan, at the town of San Ygnacio, in said district, in which town he was then visiting, but he still resided with his family, in said town of San Dimas, in the adjoining district of that name; said towns of San Ygnacio and San Dimas are about sixty miles apart.

At said town of San Ygnacio, I ascertained that Judge Milan had been compelled to give up said office, as judge of the 1st instance at San Dimas, and that his place as judge was then occupied by Cipriano Quiroz, and that, if it were possible, he hated Americans worse than said Milan ever did. One of my interpreters then and there asked said Milan, in my presence, if he had given his testimony in this case, and if depositions had been taken on the part of the defence, at San Dimas, since I left there, in 1870, and said Milan replied that there had been such depositions taken there, by Gil Ruiz, who acted as judge in taking them, and also by Judge Cipriano Quiroz, who at that time was preparing to take more depositions, under the order of José Ma. Hernandez, the Federal district attorney; and said Milan then remarked, that Judge Quiroz had spoken with him on the subject of taking his deposition, only a few days before that time, but that they had concluded that his testimony was not necessary, and that he, Milan, had come down to San Ygnacio partly on business, but mainly because he was in bad health, and thought the climate in the valley of San Ygnacio better for him than the mountain air of San Dimas.

The mails then passed but once a week between said towns of San Ygnacio and San Dimas, and at said Judge Milan's request, one of my interpreters bore from him a verbal message to his family at San Dimas, relative to the improved condition of his health, and his intended speedy return to his home; and he delivered said message to said Milan's wife and daughter, at said Milan's store, in the said town of San Dimas, which they were keeping in his absence, and from whom I purchased all of my supplies for my journey to the capital of Durango, which took place in the latter part of that month, May, 1872; and therefore it can not be true that said Milan's whereabouts and residence were not known to said Judge Quiroz; they were near neighbors, in the same town of San Dimas, and the said authorities had every facility for securing the deposition of said Ex-Judge Milan, if they had wanted it. The same applies to José Ma. Loaiza, and Francisco Gamboa; as I have already stated, they resided permanently in said district of San Ygnacio, and I saw them there, in the month of May, 1872; and, to my knowledge, depositions in cases of Americans against Mexico, were taken at both of said towns of San Ygnacio and San Dimas, on the part of said Mexican Government, between the middle of May and the 1st of September, 1872, during all of which time that district in Sinaloa, and San Dimas, Durango, and the roads between them, were in possession of the legitimate authorities; and there was nothing to prevent the taking, on the part of Mexico, of the depositions of any of said witnesses, by the authorities of San Dimas, Durango, or San Ygnacio, Sinaloa unless it was the disinclination of said authorities to have them.

I ascertained from citizens of San Ygnacio, and from said José Maria Loaiza, in 244 December, 1872, that he had not been absent from said district of San Ygnacio, during the year 1871, nor up to December 1872, except for a day or two at a time, in coming to the port of Mazatlan on business; that he was well known personally to the judge of 1st instance, at said town of San Ygnacio, and was at his home in said town of San Ygnacio in 1871, and 1872, while said authorities were taking depositions against the claimant in this case, at San Dimas, and against the American claimants in other cases at said town of San Ygnacio, and that he had never been notified by said judge, to appear before him and give testimony in this case for defense. I know it to be true, and confirm the statement of said Loaiza, so far as it relates to the taking of testimony at San Dimas, in this case, and at San Ygnacio in other cases. I satisfied myself by inquiry at San Ygnacio, and Mazatlan, where he was well known, that said Loaiza was a conscientious and truthful man, whose statement could not be influenced or controlled by any official threats of punishment—such as are referred to by said Matias Avalos, in his deposition on behalf of claimant, given in September, 1872, and by ex-governor Carlos F. Galan, in the case of James Tobin *vs.* Mexico, now on file before the Commission, in which one of the witnesses in this case, and his brother, were subjected to said abuses.

It is equally false that said Mexican district attorney, and Judge Quiroz, did not know the residence of Marcos Mora, and could not take his deposition on the part of defence in this case, as will be seen by the following facts: During the entire months of June and July, 1872, I was at the capital of Durango, for the purpose of securing certificates of the proper authorities, to claimant's perfected titles to said mines and haciendas, and also to collect the testimony in this case; and during July, 1872, I saw said Marcos Mora, frequently, in company with said district attorney, Hernandez, at the Executive Department, or State-house in Durango. Said Marcos Mora was a noted character, and it was well known to all the authorities there, that he was a native

of said capital, and that he was residing there with his family, on the 8th day of July, 1872, at the very time said order was made by said District Attorney, José Ma. Hernandez, to said Quiroz, to take the deposition of said Marcos Mora in this case; and in the latter part of the same month, viz., on or about the 23d of May, 1872, said Mora testified on the part of claimant in this case, before the Honorable Pedro J. Barraza, judge of the Supreme Tribunal at said capital of Durango, but not until he had been twice legally cited to appear before said judge for that purpose, which citation, or order of said court, the said Marcos Mora refused to obey, and he was finally arrested upon the order of said court, and brought before said judge at Durango, by means of the police, to answer a charge of contempt of court, and to answer interrogatories filed by me before said court, some days previously, touching the merits of this claim, which he refused to answer, until compelled to do so, as aforesaid.

It is not true, as alleged by the defence, that said Gamboa and Loaiza were taken by me, or by any one for me, or for claimant, from San Dimas to Mazatlan to testify in this case. They resided in San Ygnacio, Sinaloa, and not in San Dimas, Durango, and I never saw either of them in San Dimas, nor at any place in the state of Durango; nor is it true that their depositions could have been taken before Mexican authorities in their own district.

I state positively, that on my way from Mazatlan to San Dimas, in April, 1870, I called upon the judge of first instance, at San Ygnacio, in said district, in which
245 said witnesses resided, and through my interpreter, Colonel Frances F. Dana, I made application to said judge, in the Spanish language, to take the depositions of said Gamboa and Loaiza, in this case, which application said judge refused, giving as his reason for so doing, that he had to leave town at once, on business, and could not say when he would return there, and for this reason, on my return from San Dimas, a few days thereafter, said Gamboa and Loaiza consented to go to Mazatlan and there give their depositions in this case, which they did do, in the month of May 1870, before said United States consul, Isaac Sisson, Esq. Both of said witnesses selected their own interpreter, the said Carlos F. Galan, and both of them chose to go before the consul to testify, instead of the Mexican judge of first instance there, who was unfriendly to Americans, and before whom it would have been difficult, if not impossible, to make a fair statement of the facts supporting an American claim. The sworn statement of said interpreter, Galan, and the certificates of said consul, annexed to the depositions of said Gamboa, and said Loaiza, show how carefully said depositions were taken.

The "Candelaria" and "Bolanas" mines, mentioned in the 4th question and answers thereto, in the respective depositions filed as defensive evidence in this case, alleged to have been given at San Dimas, in January and February, 1871, before Gil Ruiz, by Patricio Camacho, Bartolo Rodriguez, Ramon Aguirre, Aquilino Calderon, Refugio Fonseca, and Ygnacio Manjarrez, are the mines owned and worked by the "Durango Mining Company," of which company the superintendent was Charles B. Dahlgren, whose deposition, made September 18, 1872, before Isaac Sisson, United States consul at Mazatlan, is on file as a part of the claimant's evidence in this cause, and which deposition gives the reasons why said foreigners were permitted to work the mines referred to. The alleged statements in the last-mentioned deposition of Bartolo Rodriguez, that the old hacienda, for beneficiating purposes, was destroyed by said company, and the statement of Ramon Aguirre, in said deposition, that it was taken down by said company, and the alleged statement to that effect by any other witness, is wholly untrue, for said hacienda was still standing, by the side of the new one, erected by said company, at the time I was at Tayoltita, in 1870, and also in 1872, although in 1872 a part of the roof of said building, being part of said hacienda San Nicolas, was off, and the same had been removed, as I ascertained at San Dimas, in 1872, to enable Francisco Torres, a Mexican, and James Granger, an Englishman, (who, I ascertained, was at that time, a son-in-law of said Judge Soto,) to denounce the same under the Mexican laws, and for which purpose, and to the end that they might get legal possession, said Soto, who was in possession when I was there, in 1870, had moved out with his family to San Vicente, temporarily, and sold out his interest in said property, to said Torrez, which was confirmed by the fact, that on visiting claimant's said abandoned property, at Tayoltita, in May, 1872, I found said Torrez, with his family, living in said hacienda San Nicolas, in full possession of said property, and working the mines of the same.

It is not true, as stated in one of said alleged depositions for defence, that in 1871, when said depositions were made, the six or seven thousand cargas of ores which the company had taken out and abandoned, still remained, undisturbed, upon the patios of the claimant's said hacienda, for when I visited said hacienda and patios, in 1870, the amount of ores then remaining there, could not have exceeded twelve hun-
246 dred cargas, or one hundred and seventy-five to two hundred tons of the same, which were then torn down and scattered about the Patios, giving unmistakeable evidence of having been culled out, and the refuse pieces left by those who had taken away the best of them, which I ascertained to be the fact, from the Mexican

employees who went with me in May, 1870, from Tayoltita to San Dimas to testify in this case, and were frightened away and prevented from doing so by said authorities, as already stated; and even a large part of said refuse ores, I should think one-half, had disappeared from said Patios, exhibiting evidence of a further culling out of the same, when I again visited said hacienda in 1872; and the mining tools, the retort, some of the wheels and iron work of the stamp mill, and other valuable parts of the machinery, in and for the working of said stamp mill of claimant, had disappeared from said premises, so as to render utterly useless what was left of the same.

As copies of said alleged depositions are filed by defence, and are destitute of original signatures, *rubricas* of witnesses or magistrates, and without any certification as to the character or credibility of any of said alleged witnesses, it was not my intention to make any statement in the case, neither as regards the disingenuous personal allusions to myself, by said Mexican authorities, nor the gross misrepresentations, and inventions, contained in said alleged depositions; and I have reluctantly consented to give my sworn statement of the facts, at the request of claimant's counsel, and solely to correct said misrepresentations, and any misapprehensions that might arise from my silence.

I have no interest in this case except that which arises from the relation of attorney and client.

A. W. ADAMS.

Subscribed and sworn to before me, this second day of November, 1874.

EDWARD C. INGERSOLL,
United States Commissioner for the District of Columbia.

UNITED STATES OF AMERICA, DISTRICT OF COLUMBIA,
City and County of Washington, ss:

I, Edward C. Ingersoll, United States commissioner, in and for said city and county, do hereby certify, that Alonzo W. Adams, whose deposition is herein above written, attended before me, on the second day of November, A. D. 1874, at my office in said city, and was publicly and duly sworn by me, according to law, to tell the truth, the whole truth, and nothing but the truth, in the above-entitled matter, and thereupon he deposed and testified as hereinbefore set forth, and signed his said deposition in my presence. I further certify that I am competent to take depositions, by the laws of said United States of America; that I have no interest in the claim to which the testimony of said witness relates, and that I am not the agent or attorney of said Abra Silver Mining Company, the claimant in said matter, nor of any person having such interest. I do further certify that said deposition was reduced to writing by Howard H. Morton, who acted as my clerk for that purpose, and that he thereupon testified before me that he has no interest, and is not the agent or attorney of any person having an interest in said claim. And I do further certify that I know well the said Alonzo W. Adams, as a citizen of New York, a man of responsibility, and of good character for truth and veracity; and I hereby certify to the credibility of said Alonzo W. Adams, and that his deposition is entitled to full faith and credit.

EDWARD C. INGERSOLL,
United States Commissioner for the District of Columbia.

[SEAL.—United States Commissioner, District of Columbia.]

No. 489.] REBUTTING EVIDENCE.

BEFORE THE HONORABLE, THE AMERICAN AND MEXICAN CLAIMS COMMISSION.

In the matter of the claim of La Abra Silver Mining Company versus The Republic of Mexico.

Copy Deposition of Carlos F. Galan taken on behalf of the claimant in the case of James Tobin vs. The Republic of Mexico.

La Abra Company being expressly referred to by the deponent as coming under the hostile acts of the Mexican authorities, and said deposition containing evidence affecting the above entitled case, permission is respectfully requested, on behalf of said Company, that this copy of Deposition be filed and used in this case with the like effect as if said deposition had been taken therein. The said Carlos F. Galan having been examined in the case of James Tobin v. The Republic of Mexico in rebuttal of the defensive evidence filed by Mexico.

REBUTTING TESTIMONY.

In the matter of the claim of James Tobin versus The Republic of Mexico before the Honorable the American and Mexican Claims Commission.

In session at Washington, D. C., under the Treaty of July 4th, 1868.

Deposition of Carlos F. Galan on behalf of claimant.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

At 10 o'clock a. m., this third day of January, A. D., 1874, before me, Ramon de Zaldo, a notary public, duly commissioned as such, in and for the city and county of San Francisco, personally appeared Carlos F. Galan, well known to me as a respectable and responsible man, fulfilling all the legal conditions of a competent witness, and being introduced on behalf of the above named claimant, and having been first duly sworn by me, deposes and answers to the interrogatories as follows, to wit:

Question 1. What is your name, age, nativity, residence, and occupation? State also if married or single?

Answer. My name is Carlos F. Galan; I was born in Spain; I am forty-three years of age; I reside at the southeast corner of Stockton and Francisco streets, in this city, with my family, consisting of my wife and eight children; I am an attorney and counsellor at law, and my office is room No. 12, Montgomery Block, San Francisco.

Question 2. Have you ever resided in Mexico, and if so, where and when, and for how long a time?

248 Answer. I have resided in Mexico many years, from the time when I was but a boy up to May or June, 1872, when I left for this place, except the time I have resided in this State. I came to Mexico when I was fourteen years old, and have resided in different States, Mexico, Lower California, and Sinaloa especially, where I have been most of the time.

Question 3. What has been your occupation while in Mexico, in the different States where you say you have resided?

Answer. Soon after my arrival in Mexico, I entered the military college of Chapultepec, and became a cadet therein, and I was promoted to a lieutenancy in the Mexican army, and fought throughout the war with the United States, in 1846, '7 and 8. At the close of the war I studied law, was admitted to the bar, and practiced my profession in Sinaloa and Lower California. I was also interpreter and translator of the English, French, Spanish and Italian languages. I founded the first English and Spanish newspaper published in Lower California, called "La Baja California," which still exists there, though not under my control, which I gave up when I became governor of that territory. I published, also, at Mazatlan, the first large "weekly" ever published in Sinaloa, called the "Occidental," and also another newspaper called "La Voz del Pueblo," at Mazatlan, from 1869 to 1872, where, in the meantime I was also engaged in the practice of the law, and as translator of languages, as stated.

Question 4. Have you held any other office or offices in Mexico than that of lieutenant in the federal army, and if so, state what office or offices, and where you held the same and when?

Answer. I have been chief justice of the Territory of Lower California; a member of its congress or assembly; its governor or political chief; judge of the first instance, and other offices, from 1863 to 1868. I was elected there by the people of the Territory, to the territorial assembly, in September, 1867, and became its speaker soon after, and was ex-officio governor of the Territory till May, 1868, and soon thereafter I moved with my family to Mazatlan, Sinaloa, where I resided until the summer of 1872, as aforesaid.

Question 5. Do you know the claimant, and any facts connected with his claim? If so, state when and how long you have known him, and what facts if any, regarding his claim, and when, where, and how they became known to you?

Answer. I have seen the claimant several times. I have spoken with him here in this city; have but little acquaintance with him, but know, by reputation, his business in Mexico. I have learned from various sources, while I resided in Mazatlan, Sinaloa, and published a paper there, mainly by men employed by him, and other miners, Mexican and foreign, of Mr. Tobin's working some copper mines, and of his attempts to export Brazil-wood for the San Francisco market, which he contracted to have out in the Ignacio district in Sinaloa, about 1864. I have ascertained from some of the Mexicans who made contracts with him for the same, that is, the amount they were to cut, and the time during which it was to be cut, and the amount they had

already cut, and the causes which brought about the ruin of the claimant's enterprise, and its abandonment.

Question 6. How came you to know the facts you refer to? State all you know in relation thereto, giving names, dates and circumstances, if recollected.

249 Answer. In my profession, as a newspaper man, it was my business to inquire about all matters of public interest, and ascertain the news; and about 1870 or 1871, there being some excitement about claims presented to the joint commission I inquired and ascertained a great deal concerning most, if not all the claims presented by people who had lived or were living in Sinaloa and Durango. As a lawyer also, I was consulted in many cases, and examined witnesses and was attorney in several claims, all but one, (that of George Briggs,) being against the United States. In this present case, I translated and wrote down the depositions of some of the witnesses in support of this claim, at the American consulate in Mazatlan, in May, 1870. The witnesses referred to were Trinidad Gamboa, Juan Francisco Gamboa, and Jose Maria Loaiza, who resided, the first at Cabazan, the second at Limon, and the third at San Ignacio, all in the district of San Ignacio, State of Sinaloa.

Question 7. What was the excitement about, that you speak of, and how was it brought to your notice?

Answer. The excitement was, as I have stated, about the claims against Mexico, and as my relations with some of the officials of the state were intimate, and I was brought in contact with them officially, and otherwise, I heard a good deal about the claims, and saw the effect upon the authorities there, and the action of said authorities in relation to the claims, and claimants, and what was said about this case among others.

Question 8. Who were the officials you mention; what was their rank, and what was the feeling, and how was it shown by said authorities?

Answer. They were, General Domingo Rubi, who was then military and civil governor of the state of Sinaloa, and a general in the army of the Republic; Jose D. Martinez, secretary of state; J. Aldrete, judge of the First Instance at Mazatlan; L. Gaona, district attorney for the federal courts in Sinaloa, and others. Those named being the authorities I noticed more particularly. I have had some testimony which had been taken before Judge Aldrete, destroyed by him, because it was strong for the claimant, one George Briggs, an American, against Mexico. About the time the depositions of the Gamboa brothers and Loaiza were taken in this case before the consul of the United States, as I have stated, some depositions had been taken in the case of Briggs *vs.* Mexico, which the district attorney, Gaona, got hold of in the office of the judge, Aldrete, and he read and took notes therefrom, and kept said depositions till the time had expired to present testimony under the printed rules before the joint commission; when I finally obtained the depositions, I sent them to the governor's office to have the judge's signature certified to by Governor Rubi, which he refused. I went to his office to inquire about it, and was referred by the governor to Martinez, the secretary of state, who said he would read the depositions first; he did so, and then, instead of a certificate, he wrote a sort of impeachment of the witnesses who had testified, for the governor to sign, and on being remonstrated with for this unusual and unlawful conduct, he said he would like to have such men led out and shot for testifying against Mexico, in support of the claims of these "Gringos;" he referred to the claims of all Americans against Mexico, this and others in that State, and in that military jurisdiction, embracing also the States of Durango, Jalisco, and others on the Pacific slope.

Question 9. In your former answer, you mention Domingo Rubi, the governor of Sinaloa—what, if anything, was done by him affecting this case of James Tobin?

250 Answer. The next morning after the depositions of the brothers, Trinidad and Juan Francisco Gamboa, and Jose Maria Loaiza, were taken before the American consul, in May, 1870, they came to my office, and Trinidad Gamboa told me in presence of his brother, that Governor Rubi had had a conversation with him that day about his testimony in this case, and threatened to make him and his said brother serve as a private soldier in the army, and pay to the government all damages awarded these claimants by the commission, if they did not retract what they had said for these claimants, or go before the judge at San Ignacio, and testify on the other side, and against these claims, and he said he wanted their depositions returned, as they did not wish to go before the Mexican judge and testify to anything but the truth.

Some two or three months thereafter, in one of my interviews with Governor Rubi, he moved the subject of claims, speaking of one prosecuted by a Mr. Green, and by this claimant, and others, and he became very abusive to them and to American claimants in general, and also to Mexicans who were witnesses in behalf of American claimants, and from his remarks I came to the conclusion that Trinidad Gamboa had said the truth when repeating to me the threats made against him and his brother, by Governor Rubi.

Question 10. What were the words used by Governor Rubi, as near as you can recollect them, from which you drew such conclusions?

Answer. I could not undertake to give his exact language, neither could I say that all was spoken at the same interview. We met often; we were friendly—intimately so, I may say, and we had many conversations on the subject of American claims. I always tried to convince him that he was doing wrong in interfering with witnesses and frightening them, but he insisted that the treaty itself, he said, was nothing but a pretext to get a slice of Mexico, and he said he would, by fair or foul means, defeat all such claims. He advised me to have nothing to do with them as counsel, attorney, or interpreter.

Question 11. Were you ever employed by Governor Rubi, or by any other Mexican official, to defeat said claims?

Answer. I have not been so employed, and if I had I most certainly should not be here testifying about it. I wish to explain, that General Rubi is very ignorant of international law and of treaty obligations, and he is stubborn and very much prejudiced against Americans, and he said the accounts made by some of the American claimants, for consequential damages, were exaggerated, (and I fully concurred with him, as regards consequential, or indirect damages,) and that he, Governor Rubi, was enraged thereat, and in his ignorance and prejudice against all Americans, he made no distinction of claims or persons, and he said as they had asked too much, he would beat all their claims, and they should have nothing if he could prevent it in any way, or by any means. I remember he said he would have the witnesses who had testified for the claimants in this and the other cases I have named, examined anew, and he knew they would say differently from what they had stated for claimants, or he would know the reason why. "Severe military service, and discipline," as he said, "would make them change their ideas, somewhat, as to what good loyal Mexicans should do in such cases."

Question 12. You stated, in answer to a former question, that Trinidad Gam-
251 boa had requested you to have his deposition in this matter, and that of his brother returned; were they returned, or, if not, why, and what became of them?

Answer. They were not returned, as I stated. Trinidad Gamboa, his brother, and Loaiza, came to my office, and after telling me the Governor's threats, requested me to send for Mr. Adams, the attorney for this claimant and other claimants on whose behalf they had testified, and to induce him to return the depositions, in view of the Governor's threats, and thus to save them from the dangers threatened.

Question 13. State, if you know, why were the depositions you refer to, of the brothers Gamboa and Loaiza, in this and the other cases named, taken before the American Consul, and not before one of their own judges? Say, also, if you know, whether the said Gamboa brothers were or not forced, as threatened by Governor Rubi, to go before a Mexican judge and sign depositions against this claim, and others you have named, and if yea, by whom, and how you know the facts?

Answer. It was at the witnesses own suggestion that they testified before the consul; all of these witnesses had been here in this State, California, five years, in early times, and knew English enough to make themselves understood, and the American consul at Mazatlan understood Spanish, and all of the said witnesses and the consul had, or said they had, entire confidence in my fairness and ability to take down the witnesses statements. They did not dare to go before a Mexican judge to give evidence in favor of an American claimant, they said, and I did not blame them for it, for they were aware, as I was, of the prejudice existing against such witnesses by the authorities. Jose Maria Loaiza is a claimant against the United States for $300,000, and I am his counsel, but believing it a duty, and wishing, as he did, to show his fairness and impartiality, he was willing to testify to the facts in this and the other cases I have named, yet he refused, point blank, to go before a Mexican judge to testify. The said depositions in support of this and the to other cases named, taken before Consul Sisson in May, 1870, were sent to the Joint Commission at Washington, by said attorney, or by the counsul, in my own handwriting. They were not returned to the Gamboa brothers, as requested, although the attorney offered to return them, for the reason that when I sent for the attorney to come to my office, he came and met the Gamboa brothers; the next day after their testimony was taken before the Consul, he told said witnesses he would return them the papers—their depositions—if there was one improper, or untruthful statement in them; but these witnesses insisted that every word contained in their said depositions was true. The said attorney for claimant then offered to have their depositions modified or amended before the Consul, if they, the Gamboa brothers, or Loaiza, desired it, before sending them to Washington, but they all declined this, and said they had no changes or modifications to suggest, that their depositions were truthful, and that the attorney could send them before the Commission as their evidence in those cases; and many other things were said by them, at the same time, in this connection, to about the same effect. In reference to the question, whether said witnesses, the Gamboa brothers,

were compelled, as threatened by Governor Rubi, to sign depositions against this claim, and the others named by me, I have to say, that some time in the summer of 1871, I met Trinidad Gamboa, and he related to me how they had been compelled to go before the judge of the first instance at San Ignacio, and there sign a deposi-
252 tion, written and prepared for each of them by said judge, against this claim of James Tobin, and that of Daniel Green, and others, and that they signed to save themselves from abuse, that they knew by Governor Rubi's threats, would have been inflicted upon them as a punishment for having testified in favor of this claimant and others; that the prejudice of the local authorities of the District of San Ignacio, against all American claims and the claimants themselves, was such, he said, that he believed him and his brother would have been in imminent danger if they had refused to sign the said depositions. At the time they made the depositions in favor of this claimant, and others, before the American Consul at Mazatlan, I went, at the request of these three witnesses, before the said United States Consul, and I wrote down the testimony of all three of them, in this case of James Tobin, and of Daniel Green, and also the testimony of Juan Francisco Gamboa and Jose Maria Loaiza, in the case of La Abra Silver Mining Company *vs.* Mexico, I think about the same time, and the depositions of these witnesses were corrected by the Consul in a number of places, and copied by me and read over by the witnesses, and approved, before signing by them, and we did not finish them until late at night, long after midnight on the last day they were there—and I well recollect, in this connection, the impatience and annoyance exhibited by the Consul, Mr. Isaac Sisson, on that occasion, because these witnesses refused to return there the next day to complete their depositions, but they insisted upon going on and finishing their testimony that night, which was done; but whether they were all written down that day, or whether we devoted two days or more to the work, I do not now remember, but I recollect distinctly that they were completed late at night, or before daylight in the morning, and that the Consul was in a very bad humor about it; and also that these witnesses were fairly educated, intelligent, cautious men, and scrupulously careful in reading over and correcting their depositions in many places, after they were written down before the Consul, which was done exactly as they gave them, notwithstanding which, they were so scratched I had to copy whole sheets of their depositions during the night mentioned, to satisfy them, and when they were corrected and copied precisely as requested by these witnesses, they, and each of them, declared said depositions correct and true in all respects, as to the facts stated in them, and they subscribed their proper names to the same, in my presence and in the presence of Isaac Sisson, the United States Consul, by whom they were taken.

Question 14. Were these witnesses, Loaiza or the Gamboa brothers, or either of them, prompted or interfered with in any way by the attorney of claimants, or by any other person in giving their said depositions before Consul Sisson, in May, 1870, or before or after giving them, or were the proceedings irregular, unlawful, or improperly conducted in any way in the taking of said depositions?

Answer. No; nothing of the kind happened; the proceedings were lawful and honorably conducted by the consul, the attorney, and myself, as interpreter and acting secretary of the consul in transcribing said depositions, which I did, as I have stated, at the special request of said witnesses themselves. After they came to Mazatlan and consulted me as to the propriety of testifying before the consul, and they had made up their minds that it would be proper and right to do so, I believe that no person interfered with them, or attempted to prompt them as to their evidence
253 before their depositions were completed, corrected, sworn to, and signed by them, nor do I believe that any one could have approached them in such way, excepting only the authorities, who had the power to compel them, or influence their depositions. I know said depositions contained precisely what they had previously stated to me that they knew with reference to said American claimants and their claims; and they contained nothing more than they told me was true, both before and after giving their said depositions.

The attorney for claimants, Mr. Adams, was present only a part of the time during the writing down of said depositions before the United States Consul, but said attorney did not interfere with any of said witnesses, nor with the proceedings, or the taking of their depositions in any way. The fact is, the said witnesses made their statements before Consul Sisson in these cases, with such candor and detail of circumstances as to carry conviction to my mind that they were speaking the truth, and I still believe they told the truth in those depositions; and when they came to my office, the day after they had testified in support of this claim and the two other claims mentioned, Trinidad Gamboa told me of his unhappy interview with Governor Rubi, and the Governor's threats of confiscation, and other punishments, if he and his brother did not testify on the side of Mexico, ignoring their depositions on behalf of claimants, and requested me to send for Mr. Adams, the claimant's attorney. I sent for said attorney, as requested, and he came to my office, and there he met both Trinidad and Juan Francisco Gamboa, in my presence, when Mr. Adams told said witnesses in my

hearing, that if there was one untruthful statement, or word, contained in those depositions, he did not wish to keep them, and would not permit them to be filed at Washington, upon any account. One of the brothers, Gamboa, I do not remember whether it was Juan Francisco or Trinidad, remarked, at that point, that he, the attorney for claimants, had given them barely money enough to pay their ordinary expenses from Cabazan to Mazatlan and back home, and if they should have the trouble with Governor Rubi, which they then anticipated, he, Gamboa, thought it no more than right and fair that said attorney for claimants should see that they were indemnified in some way for their loss of time, and for any trouble that might come to them. This was at once regarded, and resented by Mr. Adams, as an effort on the part of witnesses to place him, the attorney, in a false position, and he frankly told them so, declaring at the same time, that he had paid their ordinary expenses to and from Mazatlan, and the lawful fees of witnesses, and that if money was what they meant by indemnity, that he would not give them another dollar, as such a proceeding would look like bribery—that he "declined to be placed in a false position in the matter"—which were, I think, the exact words used by him; and finally Mr. Adams offered to return said depositions to these witnesses, if they would say that the depositions, or either of them, contained any statements not strictly in accordance with the facts, or if they wished to change or correct them, that they should still have an opportunity to do so before the United States Consul, then, or at any time before his leaving Mazatlan; to all of which said witnesses, the Gamboa brothers, and Loaiza, answered in my presence and hearing, that the depositions were truthful in all respects; that they had already made all the corrections they wished to make in said depositions, and they all then consented that the attorney should keep the said depositions
254 and file them before the Joint Commission at Washington as their testimony in this and the other cases referred to, and they would take the risk of punishment, and they parted with said attorney in a friendly manner, though they were apparently despondent, and fearful of serious trouble with the authorities for testifying in support of these claims against Mexico.

Question 15. Do you, or not, know anything about "prestamos," or forced loans, having been exacted and collected by Mexican military authorities, from claimants, or from foreigners generally, or of claimants' arrest and abuse by said military, during the late wars there—say from 1863 to 1867, especially in the Sta of Sinaloa and other States under the military jurisdiction or command of General Ramon Corona? State what you know in relation thereto?

Answer. Yes, I know that such exactions from foreigners were made and enforced by the military authorities all over the States of Sinaloa, Durango, Jalisco, and probably elsewhere under the command of General Ramon Corona. As editor and publisher of newspapers during the war and revolutions there, it was a part of my business and duty to inform myself as to what was going on there, and sometimes to publish the facts with regard to such depredations, but not always, as their publicity was sometimes forbidden by the military authorities, on account of the effect that such publicity would produce abroad. I do not know, of my own knowledge, that prestamos were so exacted and collected from the claimants in this case, but I have heard respectable Mexicans say so, and also that the claimant, Tobin, was arrested by the military, held as a prisoner for several days at a time, and that on one occasion he was placed under the fire of the enemy's guns, on the battle-field, at "Palos Prietos," near Mazatlan. This last-named outrage was detailed to me in full, by Lieutenant Henry Malcolm, a cavalry officer of the Mexican army—under command of General Corona, and I have heard the same facts stated by others, Mexican officers of that army, who said they disapproved of such unnecessary cruelty.

Question 16. What officers of the army, under General Corona, were authorized or allowed to exact and collect such "prestamos," or forced loans from foreigners?

Answer. All officers on duty, from Major Generals down to Lieutenants, and I have known of cases there where non-commissioned officers, and private soldiers of that command exacted and collected such prestamos, with or without the authority of their superiors in command. Such cases were common—and an every day occurrence, during the late wars there, not only during the time covered by the question, from 1863 to 1867, but even up to the day I left that country, in May, 1872, such exactions were still made and enforced in that military department, by said authorities.

Question 17. How do you know, or how were you made acquainted with the facts stated by you, in answer to the foregoing question?

Answer. By living within the military jurisdiction of General Corona, during the time referred to, and by listening to the statements of the military officers of the Republic, many of whom often stated to me that they were ordered by their superior officers in command to make such demands, and to seize, for the use of their troops, all or any provisions, or supplies found with any one, or any money, goods, chattels or other things of value, which could be converted into money, or supplies for the army, in case they should refuse or neglect to pay such prestamos; and in many
255 cases the said military authorities of the Republic, seized and converted to

their use, the goods, provisions and other supplies needed by the army, without stopping to make said exactions, or of going through the form of levying prestamos. I know the facts, too, by conversing with the sufferers, soon after the depredations were committed there, some of whom were broken up and ruined in their several enterprises, of which General Corona was the chief.

Question 18. Will you please name some of the foreigners of Sinaloa and Durango, who have suffered heavy losses, or ruin, as stated by you, on account of said acts of the Mexican military authorities?

Answer. Yes, I know a Spanish house, in Mazatlan,—that of Echeguren Harmanos & Co., late "Echeguren—Quintana y Co.," who have suffered in this way, i. e. by such prestamos alone, exacted by said military authorities, and the payment enforced from them, to the extent of nearly or quite a quarter of a million of dollars, during the time referred to; and I know of many other foreign houses there who have been compelled by said authorities to pay large prestamos for the support of said army, amongst whom I will name "Echenique Pena y Co.," "Careaga y Co.," "Storzel Bartning & Co.," "Melchers & Co.," John Valcke, and "Kelly & Co.," and amongst the American miners, farmers, and manufacturers, who have suffered in the same way—many of them having been broken up and entirely ruined by the said acts of the military, combined with the prefects of the Districts, and other local authorities, I will mention the "Trinidad & San Jose Silver Mining Company"—John Middleton, of this city, Charles Bouttier, a partner of the above, whose brother, Leopoldo, the Superintendent of their mines, actually died from the effects of his imprisonment, who was maltreated and abused, in nameless ways, while a prisoner, because he had the misfortune to have been born in France, which facts I learned from the Mexican officers themselves; George Briggs, a farmer; one Mr. Elliott; Alfred Howell, a manufacturer at Mazatlan; the "Carmen Mining Company," Daniel Green, of this city, John Cole, of Camancho, near Mazatlan, "La Abra Silver Mining Company," and James Tobin, this claimant.

Question 19. Would it have been possible, in your judgment, for claimant, or his attorney in this case, to have taken the testimony before a Mexican judge in the District of San Ygnacio, Sinaloa, in May, 1870, or since that time, in support of this, or any of the other claims of Americans against Mexico which you have named, with safety, or with any hope of justice or fairness to claimants on the part of such Mexican judge?

Answer. No, I think not; no testimony reflecting upon the military commander, General Corona, or the commander of the state, Governor Rubi, or any of his staff, could have been taken before the judge at San Ignacio, with the least hope of fairness or justice to claimants.

I often told Governor Rubi that I thought he would do the republic more harm than good by pursuing his unusual course towards American claimants, but he insisted on beating these claims at all hazards. I do not believe, I am sorry to say, that either the claimant in this case, or the other American claimants referred to, would have found any show of fairness or justice in attempting to take depositions before the local authorities of that district, or any other within that military jurisdiction.

Question 20. Are you acquainted in said district of San Ignacio, or have you ever been there, before or after you were governor of Lower California?

256 Answer. Yes; I am well acquainted there.

Question 21. Have you ever been upon the ground of claimant's works at San Geronimo—or do you know their value, or the amount of his expenditures and losses there?

Answer. No; I know of his works and molestations, and losses there only as I have stated.

Question 22. Do you know of certain proclamations having been issued by the proper authorities of the supreme government of Mexico, within fifteen years last past, inviting foreigners there, with capital, to develop the mineral and agricultural interests of Mexico, and of the effect of said proclamations upon the interests of claimant, and other Americans who are now claimants before the high court of the two governments? State what you know in relation thereto, giving their contents so far as you can recollect them, and whether said proclamations were carried out in good faith by Mexican authorities, local or national, or any proper or lawful efforts made to extend such protection by said authorities?

Answer. Yes, I know of such proclamations, as a number of them were issued during the last fifteen years, by the head of the supreme government—President Juarez, and they were published by me at La Paz, and at Mazatlan, I have no doubt, at the time, or soon after they were issued.

The last of said proclamations was issued, I think, early in 1865, in which the protection of the supreme government, and all of the authorities, were pledged to such foreigners in defence of their lawful rights, both of persons and property, with certain exemption of taxes, "port-dues," and other immunities named therein, to be given to such foreigners as should accept said invitation and pledges, all of which were

published to the world, at the time, by the journals of Mexico and the United States. These proclamations, and their promises to foreigners, were endorsed and published by the authorities of Sinaloa, and other Mexican States, which undoubtedly induced American capitalists—the claimants referred to amongst the number—to make said investments there, and to risk their money and lives in said enterprises, which were, in the main, broken up and destroyed for the want of the protection so promised, which the authorities were, I believe, unwilling to grant.

Question 23. Have you any unfriendly or personal feeling against said Governor, Domingo Rubi, or against the said Secretary, or have you ever been unfriendly with, or cherished feeling against either of them?

Answer. No, not at all; but on the contrary, Governor Rubi and myself were always friends, personally, and we are friends yet, so far as I know. Indeed, the personal friendship of Governor Rubi and myself was always of the most intimate character. We had our political differences, but were always personal friends. I appreciated his fine social qualities, and, personally, I entertain none but the kindliest feelings for him; although there are many of his official acts and national prejudices that I do not and cannot approve—some of which I have already stated in this deposition.

Question 24th. State any other facts, or any information in your possession, for the benefit of claimant in this matter?

Answer. I can think of nothing more.

Question 25th. Have you any interest, direct, contingent or otherwise, in this
257 claim, or either of the claims to which your deposition relates, or are you agent or attorney for said claimants, or either of them, or for any person having such interest?

Answer. No, I have no such interest, in this claim or any of the others referred to, against Mexico—neither am I attorney or agent for any person or persons having such interest; but in the case of George Briggs vs. Mexico, I am, or was, counsel, as I have already stated. It is true, however, that I have acted as counsel and attorney in a number of cases on the other side, while I resided in Mazatlan, as mentioned in my answer to one of the foregoing questions, and I am still interested, as counsel, in some of those cases against the United States.

CARLOS F. GALAN.

Sworn to and subscribed before me, the third day of January, A. D. 1874, in the presence of

R. FORBES.

RAMON DE ZALDO,
Notary Public.

[L. S.] STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Ramon de Zaldo, Notary Public, in and for the aforesaid City County and State, duly sworn and commissioned as such, do hereby certify that Carlos F. Galan, who is personally well known to me as the same person he represents himself to be in the foregoing deposition, and who is also known to me by reputation for fifteen years last past, personally appeared before me at my office in said city and county, at 10 o'clock on this the 3rd day of January, A. D. 1874, and having been duly sworn by me according to law to state the whole truth, and nothing but the truth, with reference to what he knows of the above entitled cause, deposed and testified, in answer to the interrogatories, as stated in the foregoing deposition; that the said answers were written down in his presence and upon his dictation; that after said deposition was completed, the witness, Carlos F. Galan, carefully read over the same, and in my presence he thereupon confirmed the truth of the matters and things stated by him in said deposition, in every particular, and he subscribed his name to the same in my presence and in the presence of the subscribing witnesses. And I do further certify that I am personally well acquainted with the witness, Carlos F. Galan, and know his reputation to be good as a man of truth and veracity; that he is an attorney and counsellor-at-law, of high respectability, and of good standing at the bar of San Francisco, and that his statements are entitled to full faith and credit: and I further certify that I am competent by the laws of the State of California, to administer oaths and take depositions to be submitted in evidence before any of the legal tribunals of the United States, or the Joint Commission of the United States and Mexico, under the Treaty of July 4th 1868. I further certify that I have no interest, direct, contingent, or otherwise, in the claim or claims to which the foregoing deposition relates, and that I am neither agent nor attorney for any of said claimants, nor for any person having such interest.

Given under my hand and official notarial seal, this 3rd day of January, A. D., 1874.

RAMON DE ZALDO,
Notary Public.

258 [L. S.] STATE OF CALIFORNIA, } *Department of State.* }

I, Drury Melone, Secretary of State of the State of California, do hereby certify that Ramon De Zaldo was, on the 4th day of June, A. D. 1872, has since been, and now is a duly commissioned, qualified and acting Notary Public in and for the County of San Francisco, in said State, and that full faith and credit are due to his official acts as such.

Witness my hand and the Great Seal of State, at office in Sacramento, California, [L. S.] the 6th day of January, A. D. 1874.

DRURY MELONE,
Secretary of State.

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EXHIBIT B.

Affidavit of J. A. De Lagnel identifying the press-copy book of the La Abra Mining Company from its treasurer to its superintendent.

DISTRICT OF CALIFORNIA:

IN THE MATTER OF THE CLAIM OF LA ABRA SILVER Mining Company
vs.
THE UNITED STATES OF MEXICO. } No. —.

Be it remembered, that on this 2d day of December, A. D. 1878, at my office, room 1, in the United States court building, in the city of San Francisco, district of California, personally appeared before me, L. S. B. Sawyer, clerk and commissioner, duly appointed by the circuit court of the United States for the ninth circuit and district of California, Julius A. De Lagnel, a witness on behalf of the U. S. of Mexico, in the above entitled matter.

Solomon Heydenfeldt, jr. esq., appeared as counsel for the United States of Mexico, and M. G. Pritchard, as consul of the United States of Mexico, resident of San Francisco, Cal.

And the said witness, having been by me first cautioned, and sworn to testify to the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows, that is to say:

Examination-in-chief by SOLOMON HEYDENFELT, Jr., Esq.:

Question. What is your name, age, occupation, and place of residence?

Answer. My name is Julius A. De Lagnel; my age is 50 years and upwards; my occupation is purser of Pacific Mail S. S. Co., and my place of residence is the city and county of San Francisco.

Q. Were you prior to the year 1861 an officer of the United States Army, and subsequently an officer in the Army in the Confederate States of America?

A. I was an officer in the United States Army for fourteen years, and subsequently served four years in the Army of the Confederate States.

Q. Were you from May, 1866, to May, 1867, the superintendent of La Abra Silver Mining Company's mines and works, at Tayoltita, State of Durango, Mexico?

A. I was superintendent of the said company's mines and works during that year, and I think the dates are about right.

Q. What has been your occupation, and residence, since you left the service of that company?

A. For little more than a year after my return I was unemployed, part of the time in New York, and during the winter at my home in Virginia. Then, from the fall of 1868 until the late spring or summer of 1869 or 1870—I forget which—I was purser on one of the steamers running from New York to Fernandina, Fla., belonging to Marshal O. Roberts. Then from the fall of 1870, until the present time, I have been with the Pacific Mail Steamship Company, employed as purser, between San Francisco and China.

Q. Are you a man of family?

A. I am not—I am a widower.

Q. While you were superintendent of La Abra Silver Mining Company, did you have charge of the property and books of said company, at Tayoltita?

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A. I had full charge of everything.

Q. State whether you recognize this book; if so what book is it?

(Witness is shown a book.)

A. I recognize it as the letter-book of the La Abra Silver Mining Company, in which was copied my official correspondence.

(The said book is now introduced as evidence in all matters of investigation connected with the claim of La Abra Silver Mining Company against the Government of the United States of Mexico, and the witness identifies the same, and the commissioner marks the same on the inside page of the cover as Exhibit A, and the witness subscribes his name thereon, and the commissioner attests the execution thereof, and identifies the book as the book shown the witness and attached hereto.)

Q. Now, as you have identified this book marked Exhibit A, please to state, to the best of your knowledge and belief, if it is the book in which pressed copies were taken of the letters written by yourself as such superintendent of said company, and whether the copies of the letters appearing therein between pages 69 and 153, inclusive, signed J. A. De Lagnel, and dated from May the 23d, 1866, to April the 10th, 1867, are pressed copies of letters written or signed by you as such superintendent?

(The witness examines the book marked Exhibit A from pages 69 to 153, inclusive, and answers.)

A. The letters contained in said book from pages 69 to 153, both inclusive, are letters written or signed by me as superintendent of said company, except the letter on page 100 and the letter on page 101, both of which are signed by Charles E. Norton. I am familiar with the handwriting of said Chas. E. Norton and recognize that the letter on page 101 is in his handwriting. The letter on page 100 is too indistinct for me positively to recognize or identify it, but I believe that is in his handwriting. The letter on page 125 is too indistinct for me to testify concerning the same. The letter on page 138 is written by the said Norton and addressed to me. I recognize the handwriting of said letter. The letter on page 144 is not written by me. It is signed J. A. De Lagnel per C. H. Exall. I can not recognize or identify the handwriting of said letter. The other letters between pages 69 and 153, both inclusive, are letters either written or signed by me as such superintendent.

Q. Do you recognize, either from your memory of their contents or your knowledge of the handwriting, the copies of letters appearing from page 1 to page 68 in said book marked Exhibit A, signed Th. J. Bartholow and dated from January the 10th, 1866, to May the 5th, 1866, as pressed copies of letters written or signed by Thomas J. Bartholow, your predecessor, as superintendent of said company?

A. I am not familiar with the handwriting of Thomas J. Bartholow; I do not know the contents of said letters; I have no recollection of ever having read them; I doubtless must have read them, but have no present recollection of having done so. Finding them immediately precedent to my own, I have reason to believe that they are his.

Q. What relation did Thomas J. Bartholow bear to the company before your superintendency?

A. He was my only predecessor in the office of superintendent of said company, appointed by the same authority that appointed me.

Q. Are you familiar with the handwriting and signature of Charles H. Exall, who succeeded you as such superintendent?

A. I am not.

Q. Are you familiar with the handwriting and signature of James or Santiago Granger?

A. Having done some writing for me, I am more familiar with his handwriting.

Q. Please examine the pressed copy of letter on page 176, dated November 8, 1867, and the letter on page 189 of said book, dated August the 12th, 1868, and state whether you recognize them to be in the handwriting of James or Santiago Granger.

A. I believe them to be his.

Q. Are you familiar with the handwriting and signature of David J. Garth?

A. I am.

Q. What position did he occupy at that time towards the company?

A. He was treasurer of said company.

Q. Examine letters bearing date at New York, May 10th, May 20th, May 30th, June the 10th, July 10th, and July 20th, August 10th and October 10th, in the year 1867, as being the handwriting of and signed by the said Garth.

A. I have examined them; I believe them to have been written and signed by him.

The witness marks letter dated May 10th, 1867, as Exhibit B, and attaches his signature thereto; and marks the letter dated May 20th, 1867, as Exhibit C; and marks the letter dated May 30, 1867, as Exhibit D; and marks the letter dated June 10th, 1867, as Exhibit E; and marks the letter dated July 10, 1867, as Exhibit F; and marks the letter of July 20, 1867, as Exhibit G; and marks the letter of August 10th, 1867, as Exhibit H; and marks the letter of October 10th, 1867, as Exhibit I; and

the said witness affixes his signature to the said exhibits; and the commissioner attests and identifies the same as the exhibits shown to the witness, by subscribing to the same, which are attached hereto.

J. A. DELAGNEL.

Subscribed and sworn to before me, this 2d day of December, 1878.

L. S. B. SAWYER,
Commissioner of the U. S. Circuit Court, 9th Cir., Dist. Cal.

UNITED STATES OF AMERICA,
District of America, ss:

I, L. S. B. Sawyer, commissioner and clerk of the U. S. circuit court, in and for the district of California, do hereby certify that Julius A. DeLagnel, the witness in the foregoing deposition named, was by me duly sworn, as hereinbefore certified; that said deposition was taken by me at the time and place in the caption thereto mentioned, and was reduced to writing by me, and when completed was carefully read to said witness, and being by him corrected, was by him subscribed in my presence.

Witness my hand, this 2d day of Dec'r, 1878.

[SEAL.]

L. S. B. SAWYER,
Clerk and Com'r U. S. Circuit Court, 9th Cir., Dist. Cal.

Transcript of material letters from the original press-copy book of the office of the La Abra Silver Mining Co., at its mines in Tayoltita, State of Durango, Mexico, containing letters from January 11th, 1866, to August 12th, 1868.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, January 11, 1866.

JOS. G. RICE, Esq., *San Dimas:*

DEAR SIR: I beg to acknowledge receipt of your letter of this day's date, and in compliance with its request I send you per bearer a small quantity of bacon, pork, butter, and pickles. I am out of coffee entirely, have perhaps ten pounds sugar and ½ pound tea. Like you, I have an order in Durango for all supplies, which I expect by 25th inst., and Don Juan Castillo is doing all he can in Mazatlan to get these articles for me from Mazatlan, and I learn that some of them are now at Bainillo, but none as yet have arrived at this hacienda; hence I cannot send as much as I would like to do, without failing to supply my own men. I have spared you all I can at this time; will let you have the balance as soon as my supplies arrive.

I have planted all the potatoes I brought up; consequently have none on hand. I did not even permit a single one to be used on the hacienda.

If nothing interferes to prevent, Dr. Hardy and Mr. Kirch will accompany Mr. Bordwell and myself on Saturday to your place.

My kind regards to Mr. Walters and others of your friends.

Your friend,

TH. J. BARTHOLOW.

6	25 lbs. pork and bacon, at 50c	$12.50
	8 lbs. pickles, at 25c	2.00
	16½ lbs. butter, at 75c	12.37
		26.87

To your debit.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, January 11, 1886.

GEORGE F. GRIFFITH, Esq., *Bainillo:*

MY DEAR SIR: I am in receipt of your favor of the 9th inst., from Sn. Ignacio, and in reply beg to say that I am pleased thus far with the report of your progress, but my experience is that little reliance can be placed in the promises of men in this country, and if you cannot get them to go along with you it is unsafe to rely upon them. You may buy corn at $10 and dried beef at $— and 3, *delivered* to the amt. of 100 cargas corn and 25 cargas latter. We are buying beans from the direction of Durango at $14 almost daily, and in this view I think it not our interest to buy beans below at over these rates; but you may buy at this price $14 to the extent of 20 cargas, and cheese from $6.50 to $7.50 to the extent of three to five cargas.

I have had the river between here and La Perla greatly Dr. Hardy and Stanislaus has been at work on it with a number of hands, and now it is quite passable; packs are coming over it daily, mules and jackasses.

I regret that Mr. Gracy has been arrested; I fear it will have the effect of exciting suspicion against all other Americans doing business in this section. Keep yourself out of all such scrapes, attend to the business of La Abra Co. and *nothing else*. Write fully and as often as you can. I am informed that we have at Bainillo candles and other goods, purchased for us by Castillo; these, as you are aware, we need badly: let all of them, if possible, or an assortment at least, come by first train, and at the same time the tools and other articles wanted by Bordwell.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, January 16, 1866.

Messrs. ECHEGURAN, QUINTANA & CO.,
Mazatlan:

GENTLEMEN: I am in receipt of your esteemed favor of 10th inst., and have noted its contents. For your kind attention in receiving, mailing, and forwarding my correspondence, I beg to return you my thanks.

In the lot of letters received by Mr. Correll I have two from our mutual friend David J. Garth, esq., treasurer of La Abra Silver Mining Co., New York, in which he says that the credit of the company shall be at all times fully maintained, and that my drafts for such amounts of funds as are necessary to vigorously prosecute our works to an early completion shall at all times meet with due honour.

I am under obligations to my friend Don Juan Castillo for his kindness in assuming the charge of my Atlantic correspondence, and should you have occasion to write to him during his absence please have the goodness to express to him my thanks.

I beg to advise you that to meet mining expenses and to pay hands for getting timbers for our mill and other necessary outlays, I have, under this date, drawn upon, in favor of Dr. W. B. Hardy, for fifteen hundred dollars, in three drafts of $500 each; they are thus drawn so as to enable Dr. H. to sell them at San Ignacio or San Juan, thus obviating the necessity of going to Mazatlan to obtain the money.

I have not yet received the goods for which Mr. Castillo obtained the permit, as mentioned in your letter; but am expecting them this week. I have made an order to Durango for a small lot of supplies, which are now on the way, to the extent of 25 cargas; these, with the few articles from your place, whilst they are in the aggregate inadequate for my wants, will assist my operations considerably. I, however, must, by some means or other, get a stock of goods for the store, and shall be under many obligations to you if you will, at as early a date as possible, get a permit from the authorities to pass for me additional supplies in small lots at a time (if they will not grant passes for large lots). I most particularly need dry goods, heavy English linens (brin), fine linen (crea), hickory shirting (rayadillo), bleached muslin (good). I have enough common on hand; 1 lb. ass'd silk, pearl buttons, needles, pins, buttons, suitable for the legs of pants; in fact, a general small assortment of these articles, as well as shawls and rebozos, and of these goods I wish you to forward me a small supply without further orders as early as possible.

7 I expect to visit your city about the 6th Febr'y, to meet the next steamer, when I shall have the pleasure of advising with you personally regarding the affairs of my company.

In the mean time believe me your friend,

TH. J. BARTHOLOW, *Supt.*

Nuestro Guadalupe Mining Co., in account with La Abra Silver Mining Co.

1865.			
Nov'r	10.	To cash paid in San Francisco for their proportion of cost of clearance papers on shipment of fuse	$4. 50
Dec'r	19.	" cash	10. 00
	4.	" 200 feet fuse, at $3.00	6. 00
	20.	" 25 feet do., at $3.00	.75
	"	" ¼ arroba powder, at $10	5. 00
	21.	" coffee and sugar	3. 25
	22.	" cups and saucers	1. 00
	24.	" am't paid Juan Gonzales	4. 00
	26.	" ¼ arroba powder	5. 00
	30.	" hat for Pricilano	2. 00
		" am't paid Cayetano Romero	6. 00

Nuestro Guadalupe Mining Co., in account with La Abra Silver Mining Co.—Continued.

1866.			
Jan'y	1.	" 1½ arrobas powder, at $10	$15.00
	"	" 4 quires paper	1.00
	"	" order Juan Gonzales	4.50
	7.	" 4 arrobas charcoal	1.50
	8.	" 200 feet fuse	6.00
		" 2 arrobas charcoal	.75
	14.	" 100 feet fuse	3.00
	"	" paper	.25
	"	" 2 arrobas coal at 37½	.75
	16.	" candles	5.00
	18.	" 3 arrobas coal, at 37½	1.13
	21.	" 4 qrs. paper	.25
	22.	" ½ arroba powder, at $10	5.00
		" candles	3.00
1865.			
Nov'r	26.	" 300 feet fuse (borried)	9.00
1866.			
Jan'y	26.	" 100 feet fuse	3.00
	"	" ½ arroba powder	5.00
	29.	" candles	5.00
		" 100 feet fuse	3.00
		" 2 qrs. paper	.50
		" 1 lb. steel	.25
	31.	" candles	2.00
		" 225 feet fuse, borried Dec'r 4 and 20	6.75
			129.13

CREDIT.

Jan'y	21.	By 1 pump and fixtures	$180.42	
		" am't assessment No. 2	550.00	
				730.42
		Balance due Guadalupe Co		600.29
		Less freight and duties on 1 barrel fuse		14.00
				586.29

January 31, 1866.

TH. J. BARTHOLOW,
Superintendent.

E. & O. E.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, Feb'y 3, 1866.

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JOSEPH G. RICE, Esq.,
San Dimas:

DEAR SIR: I enclose a check drawn by Geo. Grassie, esq., in favor of Dr. W. B. Hardy and on José M. Loyara for eighty dollars ($80), which Senor Loyara said he was unable to pay in consequence of not having the money on hand. I also enclose three of your currency checks, amount three dollars ($3), and have debited account to Durango Silver Mines with the sums, making a total of eighty-three dollars.

Please inform me when your fuse arrives, as I want to get the loan of a package until mine comes to hand. I have a moderately stock of lard, and if you need any I will loan you a few cargas, and also beans.

Your fr'd,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, Feb'y 4, 1866.

JOS. G. RICE, Esq.,
San Dimas:

DEAR SIR: In reply to your favor of 3rd inst., I beg to say that I comply with pleasure with your request to send you a box of powder and some sugar and coffee, as per memorandum, but the powder you can return when yours arrives, and I will credit you with the same.

I wrote you yesterday about fuse. When yours arrives I will want to borrow or buy one or two thousand feet; will send for it as soon as I learn of its arrival. I send the raisins also. My butter, bacon, &c., that is that remaining behind, has not yet come to hand.

Your friend,

TH. J. BARTHOLOW.

TAYOLTITA, *Feb'y* 4, 1866.

The Durango Silver Mines, bought of La Abra Silver Mining Co.

1 box, 150 lbs., powder, at 40c	$60.00
18 lbs. sugar, at 50c	9.00
10 " coffee at 75c	7.50
10 " raisins, at 50c	5.00
1 bag, 75c.; 1 yd. muslin for raisins, 37½c	1.13
Ch'g'd to account	82.13

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, Feb'y 6, 1866.

D. J. GARTH, *New York:*

DEAR SIR: Your letters dated in November, one the 30th, came to hand by the January steamer, but did not reach the hacienda in time to answer them by the return steamer. I, however, wrote you about the 1st Jan'y, giving you a report of my operations up to that date. I notice your remarks about the importance of getting out and delivered on the patio sufficient ore to guarantee that our mill can be kept running day and night. I intend to have on the patio, if industry and management can effect it, by the time our mill is ready to start, 1,000 tons of ore, and with this start I have no fear of our ability to keep the mill running. We are weekly improving La Luz mine, getting the metal laid bare gradually, so that we can increase the number of laborers in it almost weekly. We are getting out weekly 15 tons cleaned metal. Last week we increased the quantity to 18 tons. Next week, if more tools (mining) arrive, I will commence to work in "El Christo," and shall work it on this principle, viz: Start a new tunnel *on the vein* about 100 feet below Castillo's old works, then at same time commence the sinking of a shaft in the old works (on the vein) to intersect the new tunnel; thus when the intersection is completed there will be laid bare sufficient of the vein to work fifty hands to advantage, and all the ore can be dropped into the new tunnel and taken out with wheel barrows, thus dispensing with the labor of "tenateros" to a great extent, and in addition I shall, as soon as possible, commence work in "El Innocentes." These three mines alone, I think without doubt, will supply more than our machinery can work. If, however, I am mistaken in this opinion, and I do not think I am, we have "La Talpa" and La Arrayan (in working condition) to make up any deficiency.

I have put our mines and mining in charge of Mr. Geo. Cullins, a gentleman of much experience in mining, who has been working in the mines of Lower California for over two years, and I am highly pleased with his practical good sense and sound judgment; he knows more about working a mine than all the rest of us put together, and he says that in his opinion, after seeing a large number of silver mines in Mexico and the United States, and worked in quite a number, he has never anywhere seen so good a property as this.

I have succeeded in getting our business pretty well systematized, as follows: As above stated, Mr. Cullins has charge of mines and mining, and works his hands according to his own judgement, discharges any that do not suit, and no one has a right to instruct or interfere with him but myself, he being responsible to me alone. J. V. Hardy has charge of the store on pretty much the same principle; Mr. Griffith, Wm. Grove (a new man from Saline Co., Mo.), and Dr. Hardy has charge of all the pack trains; each manages and controls a train; this is necessary for the reason that if some American in the employ of the company is not constantly with the trains, there is great danger, if not a certainty, that the animals would be taken by the military authorities, and besides I could not get the Mexicans to pack for us unless I agreed to do this; besides, with this arrangement I have a guarantee that my men, animals, and effects will not be interfered with.

With regard to the change of the mill-site, I found on my return, after careful measurements and calculation, that it would be cheaper and better to put the new mill on the site of the old one, and am doing so; the wheel-pit is about dug or rather blasted out, for the whole ground was filled with volcanic and granite boulders; have burnt 100 pounds of powder in the grading already, and will have to burn a good deal more. We commenced to-day to lay the walls of the wheel-pit, and we have blasted out more rock already than we can possibly use in the walls, and much of it is splendid build-

ing rock. We also have 70 pieces of timber dressed and ready to frame into the mill, and plenty more in the yard to keep the hands at work for two weeks; there are yet 100 pieces in the woods to be brought down, 54 of which I contracted for yesterday; these comprise all the very large sticks are included in this contract, the rest are all small, and can be had at any time needed; the rafters, those 14 feet long, I have contracted for their cutting, barking, and delivery at 62½c. ea.; this is cheap, but those large and heavy sticks which require 20 men to handle are costing high. I first tried to get them down by hiring the Mexicans by the day and working them under the superintendence of an American, but found this would not do at all, as the cost was entirely too high; so I contracted with a Mexican to deliver the 54 large pieces at an average of $23 per stick. You may think this is a very high price, but when you consider that 20 to 24 men are employed to do the work, and one-half the sticks requiring two days' hard work to get them to the hacienda, it is as cheap as it can be done for.

After I had gotten all our machinery completed in San Francisco, and the belting, bolts, extras, and tools shipped and paid for, I found that instead of having between 30 and 40 tons, which you had estimated the mill would weigh, I found I had nearly eighty tons, and instead of all costing $10,500 as you had estimated it and me also in my report to the co., I found that—

The entire cost was	$15,500.00
The freight and duties	2,500.00
And the packing to Tayoltita, in consequence of the operations of Corona around Mazatlan, will average 16 to $18 a cargo, or	9,000.00
The lumber and timbers will probably cost	4,000.00
Lime will also have to be increased to	1,200.00
Mechanics and laborers, I think, will be about former estimate	7,000.00
Corn, salt, quicksilver, and other supplies	10,000.00
Castillo, for balance of account	7,000.00
	56.200.00

This difference in estimate is caused principally by the weight of the mill and its cost being first so greatly underestimated, and of course all calculations based upon the weight and cost of the mill in my former estimate are not reliable; and besides, when I left here for San Francisco in September mules could be contracted for to pack at from $8 to $10 per cargo, but after the liberals took possession of the country and confiscated large numbers of mules it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection, our mill would now be lying in Mazatlan. Had I at the time I agreed to remain in Mexico known that I would have to contend with half the difficulties I have even now encountered I never would have undertaken the task, but as I agreed to do it my pride is enlisted in the success of the enterprise, and I will see it through if it is possible for energy and industry to succeed.

10 Your explanation about the increase of the capital stock to $300,000, but not to sell any more than is requisite to put the concern in a paying condition, meets my full approval, for this is in accordance with the original understanding.

Wilson and Hardy have paid $4,500, balance due upon their original stock, but as yet Mr. Wilson has not paid the $3,000 new stock. I have paid $4,000 on my stock, leaving a balance of $500, which I will draw for whenever needed. Mr. Griffith says that he has the means in the hands of S. F. Nucholls, esq., to pay the balance of his stock, and that Mr. N. has his instructions to pay it. Dr. Porter's stock should be forfeited. Mr. J. V. Hardy says emphatically that he never agreed to pay it and does not owe Dr. Porter a dollar, and of course will not pay any portion of it.

In one of your last letters I found a power of attorney from Mr. A. A. Green in favor of Mr. Garnim (s'c'y of Durango silver mines, New York), authorizing him to dispose of his interest in La Abra mine, and you do not mention for what purpose it was inclosed to me; please enlighten me on this subject. You also state that I failed to forward the report of the Guarisamay mines and instead inclosed a report of the mines and property purchased of Castillo. There must be some mistake about this. I forwarded you as follows: 1st, report and map of survey of the Promontoria and Animas mines, Guarisamay, by Fred. Weidner, with samples of ore and silver; 2d, history of same (in Spanish) by Antonia Arriza; I also forwarded a history of this property, which I got Castillo to write, and from a letter of Mr. Nucholls to Mr. J. V. Hardy, which I read, stating that the matter was in his hands for sale, and that he was getting the Spanish documents translated; I am led to think that the papers must all have come to hand, as nothing relating to the Guarisamay property was in Spanish except this history and the title papers. In your next please be more explicit as to what the missing paper was, if any is missing.

With regard to making the deed to the company for all the property belonging to it, which is held in our name (that is, yours and mine), I beg to say that part of the original papers are in Durango and as soon as I can get them back I will make out,

acknowledge, and forward same to the company. Nothing definite has yet been heard from Farrell; Castillo's brother in Durango, who he swindled out of one or two thousand dollars; he heard of him between Durango and the City of Mexico, and sent a party at his own expense to arrest and bring him back, and he had high hopes of success. I sincerely hope he will succeed.

Don Juan Castillo has gone to Spain, to return in September. He left in consequence of the presence of the liberal troops in this vicinity, and as he is very obnoxious to many men of that party it is for him probably best that he should expatriate himself for awhile; he spoke of going by New York in the event of his not finding a more direct route from Aspinwall by Havana. Before leaving he sent to Durango all the requisite documents necessary under the laws of this country to divest Farrell of his interest in the Guarisamay property, and his brother, Don Angel Castillo, will promptly attend to it.

I go to Mazatlan to-morrow to meet the steamer and to make arrangements with the authorities to get out some supplies that I am greatly in need of. I can do this, I think, better than any one I have in my employ. J. V. Hardy will be in charge during my absence. By the March steamer I will have to draw for ($10,000) ten thousand dollars.

Yours, truly,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, Feb'y 5, 1866.

Sor. D. ANGEL CASTILLO DE VALLE,
Durango:

DEAR SIR: I am in receipt of your two esteemed favors, one enclosing invoice of goods amounting to twenty-eight hundred and forty-four $\frac{17}{100}$ dollars, and the other per Señor Ossuna, the owners of a train of mules, who desire to enter into the employ of this company. With regard to the first, I beg to say that when your bill is due, viz, May 16, I will have in your hands to meet it my draft on Messrs. Etcheguran, Quintan & Co., Mazatlan, and with regard to the latter I beg to inform you that I have sent a special messenger to the liberal commander and prefect in San Ignacio, asking permission for your friends to return to their late homes in Leneria, and to prosecute their business as formerly, and stating that I had employed them to pack for me. My messenger has not yet returned, but I am looking for his return hourly, and I entertain no doubt of my request being granted.

Hoping that our business acquaintance may result to our mutual interest and advantage,

I am, d'r sir, your ob't servant,

TH. J. BARTHOLOW,
Superintendent.

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11 *Nuestra Señora Guadalupe Co. in account with La Abra Silver Mining Co.*

1865.			
Nov'r 10.	To cash paid proportion for clearance of fuse		$4.50
Dec'r 19.	" 225 ft. fuse (borrid)		6.75
1866.			
Jan'y 29.	" 1½ arrobas powder		15.00
"	" 4 quires paper		1.00
	" order Juan Gonzales		4.50
7.	" 4 arrobas charcoal		1.50
8.	" 200 feet fuse		6.00
	" 2 arrobas charcoal		.75
14.	" 100 feet fuse		3.00
	" 1 quire paper		.25
	" freight duties on 1 bbl. fuse		14.00
	" 2 arrobas charcoal		.75
16.	" candles		5.00
18.	" 3 arrobas charcoal		1.13
21.	" 4 quires paper		.25
22.	" ½ arroba powder		5.00
	" candles		3.00
	" 500 ft. fuse (borried), (Nov. 26, Jan'y 26, 29)		15.00
26.	" ½ arroba powder		5.00
29.	" candles		5.00
Jan'y 2.	To 2 qu's paper, 50c., 1 lb. steel, 25		.75
31.	" candles		2.00
			100.13

CREDIT.

By pump and fixtures	$180.42	
" assessment No. 2	550.00	
		$730.42
Balance due Guadalupe Co		$630.29

January 31, 1866.

TH. J. BARTHOLOW,
Superintendent.

E. & O. E.

HACIENDA, LA ABRA S. M. Co.,
Tayoltita, 8th Feb'y, 1866.

Santicina Trinidad Co., bought of La Abra S. M. Co.

3 ps. French lawns, 9.50 ps	$28.50
1 " 31¼ Vars. manta, 37c	11.90
5 lbs. bacon, 50c	2.50
	$42.90

Ch. to act.

Mr. A. B. ELDER, *La Perta:*

DEAR SIR: Above you have invoice of articles sent you this morning, which we hope may prove satisfactory. We would be happy were it in our power to furnish all articles asked for or wished in your favor.

Truly, your ob't serv't,

LA ABRA S. M. Co.,
By HARDY.

HACIENDA, LA ABRA S. M. Co.,
Tayoltita, 12th Feb'y, 1866.

12 *Santicina Trinidad Co., bought of La Abra S. M. Co.*

20 lbs. sugar, at 50c	$10.00
4 doz. lassos " 37½c	1.50
	$11.50

Mr. A. B. ELDER, *La Perta:*

DEAR SIR: Your favor of 9th is to hand, and above you have invoice of articles wished, which we hope may prove satisfactory.

Truly, your ob't s'v'ts,

LA ABRA S. M. Co.,
By HARDY.

HACIENDA, LA ABRA S. M. Co.,
Tayoltita, 14th Feb'y, 1866.

Santicina Trinidad Co., bought of La Abra S. M. Co.

1 cargo beans	$18.00
2 arrobas dried beef, 4.50	9.00
	$27.00

Chg'd to acct.

Mr. A. B. ELDER,
La Perta:

DEAR SIR: Your favor to hand; above you find bill of articles ordered.

Truly, your obed't serv'ts,

LA ABRA S. M. Co.,
By HARDY.

P. S.—The beef we purchased here for you, and charge you cash.

Yours, &c., LA A. S. M. Co.

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, Feb'y 21, 1866.

Sor. Dn. ANGEL CASTILLO DE VALLE,
Durango:

DEAR SIR: Confirming my respects of the 5th inst., I beg to now to advise you that our mutual friends, the Messrs. Ossena, have received permission from General Corrona to go to Lenora and take possession of their property there, and I am also informed that their corn, which had been confiscated, has been returned to them; their mules are now packing for me, which circumstance aids me materially in getting all my machinery and effects delivered in good time. I am now of the opinion, provided the war does not stop my operations, that all my machinery and supplies from San Francisco and Mazatlan will be at the hacienda by 15th March, and that my mill, comprising ten stamps, four pans, three settlers, three concentrators, and three barrels, which machinery requires an over-shot wheel twenty-four feet in diameter, with six feet face, all will be completed and in running order by 1st June; then I will crush and beneficiate ten tons of ore per day. I have now over three hundred tons of ore mined, and the most of it on the patio, and by 1st June will have on hand at least one thousand tons.

I will thank you to forward to me as early as opportunity offers, say, 7 (seven) cargas powder (2,100 pounds) 8 (eight) cargas tallow (2,400 pounds), 10 (ten) cargas flour (3,000 pounds).

The port of Mazatlan is now open; I returned from there on the 18th, after having purchased dry goods, groceries, boots, and shoes, &c., to the amount of seven thousand dollars, all of which I expect to arrive in two weeks, when I will have a good stock.

I am working twenty Americans and over one hundred Mexicans.

Your ob't servant,

TH. J. BARTHOLOW,
Superintendent.

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13 HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, Mexico, Feb'y 21, 1866.

W. C. RALSTON, Esq.,
Cash'r, San Francisco, Cal.:

DEAR SIR: Inclosed I hand you my draft in favor of Bank of California, and on David J. Garth, esq're, New street, New York, for ten thousand dollars (gold coin), which you will please negotiate and place proceeds with current rate of exchange to my credit.

I beg also to advise you that I have also drawn upon you of even date in favor of Messrs. Echeguran, Quintana & Co., Mazatlan, for ten thousand dollars, which said draft you will please honor when presented.

Mr. Garth has embarked in the banking and exchange business in connection with two of his old friends in New York and Richmond, Va., under the firm of Harrison, Garth & Co., of which he has most likely advised you.

I am now starting 150 mules, which are sufficient to transport *all* the balance of my machinery, and if they meet with no accident all will be here by the 10th March, and I will be ready to crush and beneficiate ore by the 1st June.

My miners in one of our mines few days ago struck a small vein about six inches wide (an off-shoot), which is exceedingly rich, and the vein is widening daily; the ore will assay at least $500 per ton. I have now on hand 325 tons ore.

Your ob't servant,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, February 21, 1866.

Messrs. ECHEGURAN, QUINTANA & CO.,
Mazatlan:

GENTLEMEN: On my way home from your city I passed 174 mules loaded with my machinery, about half of which have arrived, and the rest will be here to-morrow, when Dr. Hardy will start back with 150 of them, which will be sufficient to transport *all* I have of machinery and goods left in Mazatlan. This is quite gratifying to me, and to pay the packers I need, in addition to what money I have on hand, at least two thousand dollars more, and have drawn upon you in favor of Dr. W. B. Hardy for this sum, which draft please do me the favor to honor. It overdraws my account, but to make it good I have drawn a draft in favor of Bank of California for ten thousand dollars on Mr. D. J. Garth, New York, and herewith enclose you my draft on Bank of California for an equal sum, the proceeds of which please pass to my credit.

My miners in "La Luz mine" a few days since discovered a small vein, an off-shoot from the main vein, about six inches wide, from which they are taking out ore that is worth at least $500 per ton. So Dn. Ignacio Manparres, partner of Dn. Juan Castillo, gives it as his opinion, and the Americans here who are experienced in Mexican ores concur in the same. We took out of "La Luz" week before last thirty-seven tons, and last week we commenced work in El Christo. This mine produces a large quantity of ore, but it is not worth over $50 per ton, but as it is easily gotten out, and is docile, it will pay well to beneficiate it on American machinery.

Your ob't servant,

TH. J. BARTHOLOW.

P. S.—I enclose letter to W. C. Ralston, esq., cashier Bank of California, which contains my draft on Mr. Garth. Do me the favor to forward it by next steamer with the draft I sent you on him, so both may arrive together.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, Feb'y 27, 1866.

JOS. G. RICE, Esq.:

DEAR SIR: In reply to your favor of yesterday I beg to say that I have no axes to spare, that is, to sell, but I send you by the bearer four, which you can return when yours are to hand.

I have made an order to Durango for about twenty-five cargas, consisting of powder, tallow, and flour, which order left Gavilanes to-day by the regular courier. I hope your order may reach Durango in time to come with the same train.

Your friend,

TH. J. BARTHOLOW,
Superintendent.

The Durango Silver Mines to La Abra Silver Mining Co.

14	For 4 American axes (handled), at $5	$20.00

P. S.—I will not have sufficient money to pay my hands this week, and will thank you to let me have $2 to $250 on Friday. If you can not get a chance to send it over let me know and I will send a messenger for it. I also write to Lerago for a small amount.

The Santissima Trinidad Mining Co. bo't of "La Abra Silver Mining Co."

2 p's manta, 31½, 31½=63½ vs., at 37½	23.72
10 lbs. coffee, at 65c	6.50
Amount	$30.22

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, February 27, 1866.

A. B. ELDER, Esq.:

DEAR SIR: Above I hand you bill of manta and coffee, am't $30.22 to your debit. I have no powder to spare; have ordered 2,000 pounds from Durango, and fear I will be entirely out before it arrives. I think Mr. Rice received a lot lately. Perhaps he can spare you some.

I would be glad for you to ride up next Sunday, or any other day soon that may suit your convenience, as I desire to have a talk with you on the subject of furnishing you with the supplies you are getting of us, to understand from you your arrangements, and how you desire to settle for them and the time necessary for this purpose, as well as to talk of other matters connected with business.

Your fr'd,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, Feb'y 28, 1866.

JOS. G. RICE, Esq're,
San Dimas:

DEAR SIR: I beg to acknowledge receipt of your favor of this date, and in reply beg to say that I am obliged to you for the offer of the loan of your "Boletas"; but if

I find myself under the necessity of resorting to this class of currency my own might answer the purpose; yet I do not wish to do this so long as I can avoid it. I have, however, for the purpose of making change, issued the fractional parts of a dollar to a limited extent when absolutely necessary. If Mr. Grassie should get back and you can let me have $100 or $150 by Saturday or Sunday it will be thankfully received.

Some weeks since I sent to Santiago Papasquia for a lot of mules to pack for me. Some came promptly, and are now in my employ, and to-day about 70 more arrived, all of which I fear I can not employ, yet think I need 20 to 30 of them to finish up my freight from below. If you need the rest, and will come over to-morrow or next day, we can make, doubtless, a satisfactory arrangement to use the whole lot in copartnership, as it is desirable, in my opinion, to retain them. If, however, this does not suit you, I will use all in transporting salt and corn from below. Please attend to this promptly.

Your friend,

TH. J. BARTHOLOW, *Sup't.*

TAYOLTITA, *March* 4, 1866.

WILLIAM SCOTT, Esq.,
On the road:

DEAR SIR: The bearer of this letter has a pack-train of sixty-four mules which I have hired to pack corn for Mr. Rice and myself from San Ignacio. Mr. Rice has contracted, through Mr. Loaiza, for a considerable quantity of corn, and as I had engaged this mule train, and Mr. Rice, being unable to hire any himself, has agreed that in consideration of my letting him have the use of one-half of these mules he lets me have one-half of the corn.

On receipt of this letter you will return to San Ignacio with the train. There you will meet Loaiza and Mr. Grassie, who will assist you in the loading, and Mr. Grassie will more fully explain to you the arrangement. When loaded, you will accompany the train, and at La Puerta you will divide it, sending one-half to San Dimas and bringing the remainder to this place. Mr. Grassie starts to-day from San Dimas for San Ignacio.

Your friend,

TH. J. BARTHOLOW,
Superintendent.

Nuestra Señora Guadalupe Co. bought of La Abra Silver Mining Co.

1866.			
Feb'y	7.	To 4 lbs. sugar, at 50c	2.00
		" 2 lbs. coffee, at 75c	1.50
	12.	" 4 q'res paper, at 25c	1.00
	15.	" 4 " do., at 25c	1.00
	25.	" 2 lbs. Mexican steel, at 30c	.60
			$6.10

Rec'd payment.

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, March 1, 1866.

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, March 7, 1866.

Michael Kirch, of the city of San Francisco and State of California, is hereby authorized and empowered to cast the vote for the stock owned and held by this company, viz, five hundred and fifty shares (550) of the capital stock of Nuestra Señora de Guadalupe Silver Mining Co., at the general election for officers of said company to be held in the city of San Francisco in this month, and also at any other election which may be held subsequently until this proxy shall be revoked.

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, March 7, 1866.

DAVID J. GARTH, Esq.:

DEAR SIR: Confirming my respects of Feb'y 6th, when I wrote you fully regarding my operations up to that date, I now beg to report that the wheel pit is completed, the shaft and flanges are now being set, the arms, buckets, and in fact all the wood-work is about completed and ready to set up. The tail race, which is four feet below Castillo's, is being excavated as rapidly as possible; twenty feet of it finished, over which a brick arch is now being turned; the foundation for the battery is dug, and the timbers for same are now being put in; the most of the grading is done, and the rest is progressing sufficiently to keep out of the way of the mechanics; besides, fully two-thirds of the rest of our timber is delivered and dressed and ready for framing.

Dr. Hardy and Mr. Griffith are on the road with about 150 mules. Mr. Griffith writes me from San Ignacio that *all* our machinery and the stock of goods I purchased last month in Mazatlan are loaded and on the way. I expect their arrival to-morrow or next day.

You will bear in mind that our machinery, 80 tons, arrived in Mazatlan Dec'r 13th; the country through which it was compelled to be packed occupied by the Liberal troops and the theater of military operations. This army had taken possession of all the pack animals in the country between here and the port, and therefore I was compelled to send to the vicinity of the city of Durango for mules to transport the mill; and when the animals were obtained I was under the necessity of sending to Gen'l Corona for his protection and a guarantee that the men and animals in my employ should not be taken by his forces. All this I obtained, but not without difficulty, and with all these difficulties I have in less than three months succeeded in getting all our machinery and a fair stock of goods delivered at the hacienda. Every
16 American I talked with, and a number of Mexicans, including Messrs. Echegaran, Quintana & Co., advised me to store the machinery in Mazatlan until the country was in a more pacific state; but this did not suit me, and by harder work than I ever before performed, seconded and assisted by the gentlemen in our employ, we have surmounted all obstacles, and you can assure the company that if the revolution does not now stop our operations, and I do not believe it will, their mill will be completed and crushing ore in June.

Whilst I have devoted all the energy and industry I could command in the transportation of our machinery, and keeping the builders at work, I have not neglected the mines. From "La Luz" we have taken out 400 tons, and the quantity mined weekly has been increased to an average of 30 tons, and at the same time we have succeeded in reducing the cost delivered on the patio to $15 per ton. In this mine we have found a small vein, an offshoot from the main vein, which is now about six inches wide, which is producing with two hands (no more can be worked in it) from three to four hundred pounds per week of ore of surprising richness. If the opinion of the Mexicans, including Dn. Ignacio Manfasses, is worth anything, these say it will yield $1 to the pound. I think this an overestimate, but I would not be surprised if it should assay $1,000 to the ton. I have put up about two pounds of it, which I will send with this letter, by Wells, Fargo & Co.'s Express. On its receipt I would be glad if you would have it assayed and report the result. This ore we put up as fast as mined in gunny sacks and store it in the ware room. "El Christo" mine turns out greatly better than I anticipated. While working in the new tunnel and sinking the shaft from the old works to intersect it, we are taking out from ten to fifteen tons a week. We expect the tunnel to strike the vein in thirty feet, when the quantity of ore will be more than doubled, and when the shaft and tunnel has been made to intersect each other this mine cannot fail to yield from 60 to 70 tons per week, ample to keep the mill employed day and night. The ore from this mine looks remarkably well. In many pieces virgin gold is plainly seen with the naked eye. Mr. Cullins, our head miner, says he has never seen such a mine in all his experience in California and Mexico, and he has been working in mines for fourteen years. The vein issix feet wide and the ore uniform, requiring but little assorting, and besides, it is easy to blast and get out, and is, I think, less rebellious than any ore we have. I expect to commence in another mine in a week or two, for, as I promised to have 1,000 tons of ore on the patio by the time the mill is completed, I am determined to do it, and at the same time to have the mines in such a condition that there can be no possibility that the mill when once started will ever have to stop for the want of ore. So far from this being the case I am fully convinced that if our mines are worked with proper system and judgment the company will, in the next twelve months, be compelled to erect another mill with twice the capacity of the present one to enable it to work the ores which by that time will be produced, and when La Abra tunnel shall have been cut to its intersection with La Abra vein at least 100 stamps with the requisite number of pans, &c., will be required.

As you are aware, I have always been sanguine with regard to the success of this enterprise and the great value of the property possessed by the company, and if at any time there has been any cause whatever to doubt its success, active work upon it

has dissipated that doubt. Revolution and war or criminal bad management alone can cause a failure. I am fully convinced that within quite a short period after our works are completed and running it will be demonstrated that this company owns one of the best mining properties on the continent of America if not in the world, but this, like all other valuable property, will require close and constant attention, as well as systematic judgment and integrity, to realize the profits that ought to be obtained from it, as all may be frittered away by dishonesty or bad management, and instead of the property paying a large profit, if it should be managed like some other mining properties in this country, it may result in loss, but this can, in my opinion, only occur from the causes mentioned above. The thousand tons of ore which I will have mined when the mill is ready to start will, in my opinion, fully reimburse the company for the entire expenses of the mill and all other improvements which I have been compelled to make.

Soon after I commenced laying in my supplies for the coming rainy season, I found that we did not have near enough warehouse room to store them. The corn room was soon filled. Salt and lard filled up the corner room, and beans, powder, and groceries filled the third to overflowing, besides the back shed was soon piled up with everything we could put into bags, so as to render them secure against damage or theft, and yet not half enough was had to supply us during the long rainy season.

I was therefore compelled either to raise the hacienda another story or build other store-rooms. The former I found to be attended with much difficulty as well as exposure to loss in the event of rain, so after reflection I concluded to build a row of one-story rooms just opposite and in front of the present building, leaving a street between the two of 30 feet in width. I then made a contract with Judge Haight, an American, to put up a building 101 feet in length by 18 feet wide (in the clear), to be built 17 of adobes, the walls to be 16 feet high, the roof of tiles, and the floors of brick, to be divided into five rooms, he to furnish all the materials except the wood; this I am to furnish. He took the contract for $875 and to pay his board while engaged in its construction. This I regard as very low, and am fearful he will lose money on it, but he is doing the work with great rapidity; will have the most of it completed in a month. The first room next to the race I design for an office; this will be 18 feet square; the next, 18 x 36, will be the store, and the next three are intended for warerooms. When completed I will take the old store for a sleeping-room for our employés. At present we are sleeping on the patio, as we have not house-room for more than half a dozen.

I have in store 200 cargas corn, 100 cargas beans, 100 cargas salt, some $2,000 worth lard, besides a large stock of flour, powder, drill steel, etc., and will require, in addition, 700 cargas more corn, 500 cargas salt, and if dry-goods continue to sell as fast as they have for the past month, will have to have $10.000 more of them. Our sales range from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store under good management will, I think, yield a net profit of twenty thousand dollars per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3c. to 6¼c. at a time. I have seen women stand at the counter and make three purchases of cheese of 3c. each; they do this under the impression that they get more in the aggregate by buying in such small quantities; yet when they come to purchase a dress, a rebozo, or shawl, they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent., and fancy dry-goods from 60 to 100 per cent., and the most difficult task I have now is to keep an ample supply on hand to meet the demand.

In my last letter I informed you that one of my employees, Wm. Grove, esq., formerly of Saline Co., Mo., was missing, and I feared had been waylaid and murdered; since then my worst fears have been realized, for after a search of two weeks his body was found buried in the sand on the bank of the Piastla River, some ten miles above the mouth of Candalaro Creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible so ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found; the mule is, however, likely to turn up, as it had our hacienda brand "U.S." on the left shoulder. These facts were promptly laid before the commander of the liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These we are assured will be tried by court-martial, and if found guilty will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking; he had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had nominally purchased a train of pack mules in Mr. Grove's name and sent him to San Ignacio to obtain a permit for them to pack for me, and a guarantee that they would not be taken by the army; he succeeded in getting these documents and was on his way home to take possession of the mules

and start them to packing; he passed the night previous to his death at the house of one Meliton, at Techamate, the place where you will recollect we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation, was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places.

You will cause to be forwarded to me as soon as issued the certificates of stock in favor of Messrs. Hardy & Wilson, which I will deliver to the parties as soon as all is paid up. The original stock to them of $22,000 is to be divided equally between Jas. M. Wilson and Irby V. Hardy; the $5,000 subscribed in New York by I. V. Hardy is paid in *full*, and the certificate is to be issued to him. Mr. Wilson agrees to pay in this month one-half of his new subscription of $3,000, and the balance next month. Send all these certificates to me by next steamer and I will deliver them to the parties.

My stock is paid, but the company will retain my certificate until my return. Mr. Griffith has given me no instructions regarding his certificate. In my last I wrote you what he said about payment of the balance due. I have not yet gotten our title papers from Durango; as soon as they are to hand I will make out and forward the deed you have requested.

As I advised you in my last, I have drawn upon you in favor of the Bank of California for ($10,000) ten thousand dollars, which draft will go to San Francisco by the steamer of the 16th inst. The most of this money I expect to use in the purchase of salt and corn. Will start the mules, now engaged in packing machinery, to bringing up these supplies as soon as they arrive with the balance of the mill, which will be in a day or two. When our mill is running we will not use less than five hundred pounds of salt daily, and as none can be packed in June, July, Aug., and September, and perhaps October, it is absolutely necessary that enough be in store to run us during the rainy season. To keep us fully supplied with this necessary article will require during the packing season a train of at least 100 mules, and another train of an equal number will be necessary for corn and panocha. All these matters will require constant and assid'ous attention from your superintendent, for a failure to obtain an ample quantity of these supplies for the rainy season will not only involve a very heavy expense, but will greatly retard, if not absolutely stop, your work. If the latter should occur you will lose your miners, and much time will be required to obtain a new set, for these men are so improvident that if they are without work for two weeks at a time they and their families are in danger of starvation, then mutiny and revolution is the inevitable result.

In my last letter I reported that I had paid $1,100 assessment to the Guadalupe Co. Since then I am informed that you had sent a check to the company in San Francisco for one assessment of $550, and Mr. Correll has paid back to me this sum, consequently I have only paid $550 on this account. This company's mine is in a good fix, the tunnel has intersected the vein, and they are now taking out a fair quantity of good ore, but I think at too heavy expense under the present management. I have written to the pres't of the co. that a change was absolutely requisite in the management here, and asked him to send a competent man to take charge of their business here—one that would work in harmony with us and regard the interests of both as being identical, which is the case. But Mr. Correll does not appear to regard the matter in this light, and instead of assisting me to manage and control the population (Mexican) he endeavors to thwart my authority, and has in consequence given me no little trouble lately. However, I have told him plainly that he must change his course or he or I, one, would have to leave. Since then I have got along better, but still by no means satisfactory.

Mr. Kirch, one of the trustees of this company, who spent nearly two months here, fully agreed with me in my views of management, and promised me to urge a change. I advised the company to send Mr. Kirch here as superintendent, and hope they will do so. By this steamer I forward to Kirch a proxy authorizing him to vote the stock owned by our company at the general election to be held in San Francisco the last of this month; this will enable him, I think, to oust Correll, and I am very anxious that this should be done as speedily as possible.

I think by next month, if no accident occurs, I will be enabled to report an amount of work completed that will be eminently satisfactory to the company. I, of course, don't know what view the company entertains of my progress thus far with the great difficulties I have had to surmount, but I can assure them that my success has been far beyond my expectations.

Your fr'd,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, March 7, 1866.

MICHAEL KIRCH, Esq., *San Francisco:*

DEAR SIR: Herewith I enclose you a proxy authorizing you to vote the stock owned by this company at the general election to be held, as I understand from Mr. Correll, very soon, and of course you will vote it as your best judgment will dictate, for on this subject I have no instructions to give.

Hoping soon to have the pleasure of seeing you here with authority to take charge of the business of your company,

I am, &c.,

TH. J. BARTHOLOW, *Supt.*

HACIENDA, LA ABRA SILVER M'G CO.,
Tayoltita, March 7, 1866.

Messrs. ECHEQURAN, QUINTANA & CO., *Mazatlan:*

GENTLEMEN: One of my mechanics desires to make a remittance of two hundred and fifty dollars to his brother residing in Scotland, and I will thank you to in-
19 vest this sum is a sterling bill, on London or Liverpool, payable to the order of John Weir, and inclose same in a letter to him directed as follows: John Weir, baker, Lamlash, Island of Arran, Scotland. You will also please inclose the letter herewith to the same party. This sum you will place to the debit of my account.

Mr. James M. Wilson, the bearer of this, goes to Mazatlan with a small pack-train, to bring up some goods which I expect have arrived by this steamer; please have them passed at the custom-house and delivered to Mr. Wilson as speedily as may, so he will not be unnecessarily detained with his mules on expense in Mazatlan.

You will also do me the favor to forward, by Mr. Wilson, one thousand dollars ($1,000), which said sum you will charge to my account. I forward by Mr. Wilson a package of letters and a small package of silver ore, all of which please forward per Wells, Fargo & Co.'s express, charging expenses to my account.

I have now on hand fully four hundred tons of ore (400 tons), and am mining over thirty tons per week. The ore of "La Luz" continues to improve in quantity and quality. I now believe that by the time the mill is completed I will have enough ore on hand to pay for the entire cost of the mill and improvements.

Your fr'd,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, March 13, 1866.

Señor Dn. ANGEL CASTILLO DE VALLE, *Durango:*

DEAR SIR: I wrote you on the 21st February, requesting you to send me, with as little delay as possible, 7 cargas powder, 2,100 pounds; 8 cargas tallow, 2,400 pounds; 10 cargas flour, 3,000 pounds; and having an opportunity to send you this letter, I repeat the order, so as to avoid too great delay in the event that my first letter did not reach you.

In addition, if an opportunity occurs, I desire you to send me 4 cargas costales, 12 arrobas each; 1 box cigarros dobles; 1 box puros (8 in a bunch); 5 cargas powder (15,000 pounds).

Your fr'd,

TH. J. BARTHOLOW.

All my machinery except about 10 cargas, which will be here to-morrow or next, has been received, as well as all the goods I purchased in Mazatlan. Considering that these effects weighed over 80 tons, and all packed up, through a country in a state of war, in less than three months, is quite good evidence of industry and energy.

B.

Señor Dn. Arcadio Larraya to La Abra Silver Mining Co.

1865.

Nov.	5.	Por 2 piezas indianas, $7.50		15.00
		" 2 docena pannelos, $3.30		6.60
		" 1 cotence		62
	21.	" 1 á pulose		10.00

Señor Dn. Arcadio Lareaya to La Abra Silver Mining Co.—Continued.

1866.				
Enero	1.	" Libraza contra Echequran, Quintana & Co		1,502.53
	7.	" 500 pies maches		16.00
	20.	" 181 " asugue, 80s		144.80
Feby.	28.	" pagar M. Gray, por trai asugue. &c., Mazatlan & Comancho.		10.50
		Suma		$1,706.05

CREDITO.

1866.				
Novr.	9.	Por effectos	510.76	
	24.	" "	971.59	
Decr.	2.	" "	42.50	
1866.				
Enero	30.	" 24 " marchas	7.92	
				1,532.77
		Bal		$173.28

Tayoltita, *Marzo* 14, 1866.

Señor Dn. Arcadio Lareaya:

Conquerdamente con sus deceos remito á V. factura de la cuenta que tiene V. corriente en este negociacion.

Soy de Vd. ato. y S. S.,

Th. J. Bartholow.

[Translation.]

251 *Mr. Arcadio Sareaya to La Abra Silver Mining Co.*

Dr.

1865.			
Nov.	5.	To 2 pieces chintz, at $7.50	$15.00
		2 dozen handkerchiefs, at $3.30	6.60
		1 piece awning	62
	21.	1 arrobe gunpowder	10.00
1866.			
Jan.	1.	To draft on Echequran, Quintana & Co	1,502.53
	7.	500 feet match rope	16.00
	20.	181 pounds quicksilver, at 80 cents	144.80
Feb.	28.	Mr. Gray for freight of quicksilver from Mazatlan to Comanche	10.50
		Sum	1,706.05

Cr.

1865.				
Nov.	9.	For goods	$510.76	
	24.	Do	971.59	
Dec.	2.	Do	42.50	
1866.				
Jan.	30.	24 samples	7.92	
				1,532.77
		Balance		173.28

Tayoltita, *March* 14, 1866.

Mr. Arcadia Sareaya:

In compliance with your wishes, I send you your account with this negotiation.

I am your attentive and sincere servant,

Thos. J. Bartholow.

20

HACIENDA LA ABRA SILVER M'G CO.,
Tayoltita, March 15, 1866.

SEÑOR D. JUAN DE DAVALOS, *San Javier:*

DEAR SIR: In reply to your favor of 13th, beg to say that Messrs. Echequran, Quintana & Co. have sent me for collection a draft drawn by Señor Dn. Gregorio Blanco on you for $656, and also one drawn by same on Señor Dn. Francisco Torrero for $611.96; these drafts I will send down by the first opportunity.

I notice your remark that you have purchased some of my drafts on Messrs. Echequran, Quintana & Co., and that you desire to pay these to me on this %, which will be entirely satisfactory, and you can so inform Señor Dn. Franc'co Torrero.

Your ob't servant,

TH. J. BARTHOLOW.

[Translacion.]

En respuesta á la favorecida de V. fecha 13 del corriente digo, que los Sores. Echequran, Quintana y Ca. me mandan colectar una libranza girada por el Sor. Blanco contra Vd. por $656, y al mismo tiempo una libranza por el mismo. Contra el Sor. D. Francisco Torrero por $611.96, estas libranzas las mandase con la primera oportunidad.

Noticio á Vd. que quedo entendido que Vd. ha comprado algunas de mis libranzas contra Echequran, Quintana y Compa., las cuales segun entiendo V. decide pagarme con ellas en este cuenta, lo que sera para mi enteramente satisfactorio lo mismo que podra Vd. informar al Señor Dn. Francisco Torrero.

Su ovedte. servidor,

——— ———.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, March 17, 1866.

SEÑOR EL ADMINISTRADOR DE RENTAS,
San Ignacio:

DEAR SIR: The bearer of this, Mr. William Scott, goes to San Ignacio under my instructions to pay the taxes on the goods I have purchased to supply my miners and laborers, which goods have been received here, on which I am informed through several sources that you or some one else holding office under the Republic of Mexico have determined to force from me as a tax upon these goods a tariff of sixty-five per centum. I cannot believe that any officer of this *Republic* can be induced to perpetrate such an outrage upon a *citizen* of the *United States*, the only *Government* on the globe which *recognizes this Republic* and is giving it moral and substantial aid in her present conflict with *Maximilian* and his *European allies*. If such a tax as this is imposed upon me I desire *General Coronna* to send here an officer empowered with written authority to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, put my goods and property under the protection of the flag of the *United States*, and from under it I intend they shall be taken. At the same time I shall offer no other resistance to any *legal* officer of the Mexican Republic than to enter my solemn protest against it and appeal to my Government at Washington; and, besides, if this large tax is collected from me, I will be thereby compelled to close up all my business here, abandon my property, and return to the United States, for this course will save more money for my partners and myself than to continue operations here any longer under such enormous taxes. No business can stand such, neither in Mexico nor in any other country in the world. My partners and myself have purchased a hacienda and mines here, for which we paid *cash* $50,000.00; are now building machinery which will cost besides $65,000.00. This large amount of machinery will be completed and operating in four months if I am not compelled to stop work on it by these large taxes and restrictions, but, as before stated, if anything like such a tax as sixty-five per centum is imposed upon my merchandize I had better at once abandon my work, pay off and discharge miners, mechanics, and laborers, and of these I have in my employ thirty Americans and one hundred and fifty Mexicans (these latter Mexicans are wholly dependent on me for their daily food), and leave the coun-

21 try until a time shall come when Americans (citizens of the United States) can find that security and protection from the Republic of Mexico which they are entitled to receive, and which the *minister plenipotentiary of the Republic of Mexico at Washington* (the capital of the United States) assured my company before we embarked in this enterprise we should have.

Now, I am willing and anxious to pay any just and legal internal tax that the laws of the Republic require, but as I have already paid at Mazatlan the *import duties* upon my goods to the imperial authorities who occupy that port, there is no legal right or justice in the officers of the Republic occupying the interior in demanding of me the payment again. It is the misfortune of the Republic that it does not occupy the port of Mazatlan, and certainly is not my fault.

If Mr. Scott can make an equitable and just settlement with you for the payment of a fair and legal tax he is fully empowered by me to do so; if, on the contrary, he cannot, then he is instructed by me to take a copy of this letter, which I have given him for this purpose, to General Corrona and make the payment direct to him.

Your ob't servant,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, March 17, 1866.

Señor El GENERAL CORRONA,
Commanding forces of Republic of Mexico, in Sinaloa:

DEAR SIR: I enclose you herein a letter, a duplicate of which I have forwarded to Señor El Administrador de Rentas, at San Ignacio. By reading this letter you will understand the matter in controversy between this officer and myself; and there is, therefore, no necessity of my repeating my arguments in that letter to you.

Now, general, whilst I have not had the pleasure of making your personal acquaintance, yet I have for nearly a year during my residence in this country become well acquainted with you from reputation, and entertain for you a high regard for the character you have amongst a large majority of your countrymen, who have been living under your rule, and I know that you cannot from your sense of justice permit the operations of my company, which are on a large scale, to be brought to ruin and compelled to cease from the imposition of such enormous taxes as the officer at San Ignacio threatens to impose upon me.

During the late revolution in my country I held for two years under the Government of the United States the same rank and command which you hold under your Republic, and as a brother soldier of a *neighboring and friendly Republic* I appeal to you for justice, and I feel my appeal will not be in vain.

Mr. Scott, the bearer, will give you such details regarding this matter as you may require.

Truly, your friend and ob't servant,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, March 17, 1866.

Messrs. ECHEQURAN, QUINTANA & CO., *Mazatlan:*

GENTLEMEN: I beg to acknowledge receipt of your favor of 9th inst., enclosing a package of letters, which the ag't of Wells, Fargo & Co. failed to deliver in time to be forwarded by Mr. Loaiza, and also two drafts drawn by Gregorio Blanco; one on Fran'co Torrero for $611.96, and the other on Juan de D. Dabalos for $656, which, in accordance with your request I will collect and place proceeds to your credit.

I enclose herewith Spanish invoice, consul's clearance, and bill of lading for a lot goods which came to me on the last steamer, which my agent in San Francisco has again sent to me instead of to you, notwithstanding when I ordered the goods I especially called his attention to the matter, and requested him not to make the mistake again. I hope, however, duplicates of these papers have been sent to you. If not, I fear Mr. Wilson's mules will have to return without cargas. If they do, I will be subjected to a heavy expense and considerable delay. This is annoying, for in this lot of goods are some tools and a circular saw, which I am daily in great want of.

Truly, your friend, TH. J. BARTHOLOW.

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22 *Nuestra Señora Guadalupe Mining Co., in account with La Abra Silver Mining Co.*

1866.			
March	2.	To 1, at flour	$4.50
	4.	" paper	1.50
		" am't rations, by Petrenilo's order	6.50
	24.	" paper	25
	28.	" sugar	1.00
	29.	" 1 shawl, per Juan Gonzales	10.00
	8.	" cash	10.00
	17.	" do. paid Petrinilo	36.38
	25.	" do. handed you	100.00
	28.	" do. for 6 cargas from Comacho	60.00
			$230.13

Hacienda, La Abra Silver Mining Co., Tayoltita March 31, 1866.
Received payment,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, April 6, 1866.

Messrs. ECHEGURAN, QUINTANA & CO., *Mazatlan:*

GENTLEMEN: I beg to advise you that I have collected the two drafts you forwarded to me on parties in San Jarvier; amounts $611.96 and $656—total, $1,267.96; which sum I have passed to your credit.

I have at last, after meeting with almost extraordinary success in getting my machinery and effects transported without loss or delay, and my works here rapidly approaching to completion, met with a loss by the robbery of Mr. Scott, one of my employés, to whom you will remember you paid a short time since on my account $1,000. This money, and a small amount besides, was taken from him the day he left Mazatlin by six or seven armed men at a place on the road a few miles from Comacho. The whole loss to the company is $1,178, and is lost, of course, beyond the chance of recovery. Fearing occurrences of this nature, I have invariably pursued the plan of not trying to transmit by any one messenger any very large sum, for I have known it was involved in risk. In consequence of this loss I may have to overdraw my account with you to a limited extent, as I do not wish to draw a draft on the company by the April steamer, but by the May steamer I will draw for ten thousand dollars, which draft I will forward you in due time.

Messrs. Weil & Co., San Francisco, of whom I purchased the tobacco which came by the last steamer, request me to have forwarded to them the landing's certificates of this tobacco to enable them to cancel their bond. This I presume is necessary, from the fact that the article of tobacco pays an internal tax to the United States of 40 c's p'r lb., but if exported from the country the Government refunds to the exporter this tax; hence the request of Messrs. Weil & Co. Please attend to this matter for those gentlemen. All the goods forwarded by Mr. Wilson came to hand in good order, and all I had purchased came except one bag dried peaches and one bag dried pears. Please take care of these until I can send for them.

I shall order by the steamer of the 16th instant a lot of flour and some few other things from San Francisco, which will be consigned to you, and I will again try to get the Spanish invoices and bills of lading inclosed to *you* instead of to me, as was the case with my two last shipments.

My work here is progressing very well. Some delay has occurred from sickness of some of my mechanics. Ague and fever is quite prevalent here. All of us have been more or less affected by it. Our water-wheel is completed, the battery is built and set up in its place, and nearly all the other wood wook is finished. The stone work of the mill walls are partially built on this stone work. We will build brick walls; are now burning a kiln of 85,000 brick for this and other purposes. Our iron work is a little behindhand, but I am trying hard to get it up, and hope to do so soon.

Our pile of ore is now increased to fully, if not over, five hundred tons.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, Mexico, Ap'l 10, 1866.

Messrs. WEIL & CO., *San Francisco:*

GENTLEMEN: Your favor of February 27th came to hand by the March steamer; but as this hacienda is distant nearly one hundred and fifty miles from Mazatlan, there was not sufficient time to answer by return steamer.

23 Herewith please find draft (original and duplicate) of my firm, Bartholow & Bro., in your favor on Messrs. W. P. Converse & Co., New York, for one thousand dollars (gold coin), which please pass to my credit, with current rate of exchange for the balance that will be left in your hands, after paying my account to you, I will draw for to pay some other bills I am owing in your city.

I have written to Messrs. Echeguran, Quintana & Co., Mazatlan, to forward you the landings certificates as you request in your letter.

One of my employés, who is a very large man, cannot get clothing here sufficiently large to fit him, and I will thank you to purchase and forward by Wells, Fargo & Co.'s express to me, to the care of Echeguran, Quintana & Co., Mazatlan, as follows:

One-half doz. linen shirts 15½ inches neck, 44 inches breast, 24 inches in the arms; and 3 pairs pants, one pair to cost about $10, and the other two strong working-pants, to cost $7 to $8; size, 34 inches waist, 43 inches hips, and 36 inches legs; have this package marked wearing apparel and charge cost to my account.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, April 10, 1866.

Messrs. BRODIE & Co.,
San Francisco:

GENTLEMEN: Inclosed I hand you my check in your favor on Messrs. Weil & Co., for two hundred and eighty-seven $\frac{50}{100}$ dollars, the amount you purchased of Messrs. Conroy & O'Connor the company and which you say those gentlemen charged to you.

I am not much given to entering complaints, unless the cause is great, and I have such a complaint to enter against you; it is this: When you shipped the pulley which Mr. Bordwell ordered from Mazatlan to replace one that was broken, you forwarded the bill of lading and Spanish invoice to me, instead of inclosing these important documents to Messrs. Echeguran, Quintana & Co., Mazatlan, the consignees, and when I ordered the last lot of goods from S'a Francisco, the shipping of which I entrusted to you, I wrote you specially with regard to this error and requested that you would not again commit it. Under these circumstances, feeling sure that you would not, and wanting the goods badly, I started a train of mules to Mazatlan to meet the steamer on her arrival to get the goods up without delay, but imagine my surprise at receiving a week after the departure of said train your letter inclosing the bill of lading and Spanish invoice; here was a pretty fix, the goods in the custom-house in Mazatlan, my mules on expense, and the documents necessary to get the goods out of the custom-house 150 miles from it. Had your intention not been called to the fact it might have been excusable, as was the case the first time, but to commit the same error again is, to say the least of it, culpable neglect, and you ought be made to pay the loss occasioned by it. I returned the documents to Mazatlan by a special messenger and got the goods passed and have since received them here.

I have ordered some flour from Messrs. Weaver, Wooster & Co., and some fuse from Messrs. Edw'd H. Parker, to be shipped by the next trip of the Stephens, and I want from Conroy & O'Connor 2 dozen Wright's mining picks, which you will get for me and ship with these goods. Please try to make the shipment properly and send the bill of lading and Spanish invoice to Echeguran, Quintana & Co., and not in a letter to me, directed to the care of this firm, as you did twice before, as these gentlemen do not feel themselves authorized to open my letters. I have written to Messrs. Weaver, Wooster & Co., and Ed. H. Parker, that you would attend to the shipping, &c.

Your friend,

TH. J. BARTHOLOW.

P. S.—Why has Conroy & O'Connor charged 2½ per pound more for the hammers you purchased of them than they charged me for those I purchared? I think they ought to reduce them to the same price.

B.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, April 10, 1866.

EDW'D H. PARKER, Esq're,
San Francisco:

DEAR SIR: Your favor of Feb'y 26th, enclosing invoice of fuse, umounting to $182, came to hand by the March trip of the John L. Stephens, but not in time for me to answer and remit by her return trip, as this place is distant 150 miles from Mazatlan through a country possessing no mail facilities whatever.

24 Herewith I hand you my check on Messrs. Weil & Co., of your city, for one hundred and eighty-two dollars to balance my account; and please forward per return steamer 30,000 feet dry safety fuse, $5; 10,000 feet double-tape fuse, $14.

Messrs. Brodie & Co. are instructed to attend to the shipping of this fuse, as before. I have tried the low-priced $5 fuse, and find it to answer a good purpose in a dry mine.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, April 10, 1866.

Messrs. WEAVER, WOOSTER & CO.,
San Francisco:

GENTLEMEN: Your favor of February 26th, covering invoice of provisions, &c., amounting to $292.93, came to hand by the March trip of the *John L. Stephens*, but did not reach me in time to answer and remit by her return trip, as this place is distant 130 miles from Mazatlan, in a section possessing no mail facilities whatever.

Herewith I hand you my check on Messrs. Weil & Co., for two hundred and ninety-two $\frac{33}{100}$ dollars, to balance my said account. You will please forward by return steamer 100 bags flour, 98 or 100 pounds each, enclosed in gunnies; flour of same quality I purchased of you in November. Messrs. Brodie & Co. will attend to the shipping, as before.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, April 10, 1866.

DAVID J. GARTH, Esq're, *New York:*

DEAR SIR: Since my report of March 6th, wherein I wrote you fully with regard to my operations up to that date, I have no letters from either you or any other member of the company to reply to, as none came by the March steamer, therefore I proceed to detail events and progress of the month past. Our water-wheel is complete, ready to receive the gearing, the wooden portion of the battery, composed of over sixty large sticks of square timbers, all of which are dressed, bolted together, and set up in their proper places, all solid and on an enduring foundation, and now ready to receive the iron mortar-bed; the walls of the mill-house, that is the rock portion of them, are progressing, the one nearest to and running parallel with the river is completed to its entire height; a portion of the side walls are up to a considerable height; these I will cap with walls of brick and build cross-walls of same, and on the top of all we will erect brick columns to support the roof; have just burned a kiln of 85,000 American brick for this and other purposes. The tail-race is graded by blasting for most of the distance through large granite bowlders, and is ready for the walls and arch. We have yet a little more blasting to do to get the floor of the mill down to a proper level. You would be astonished to see the quantity of rock we took out of the foundation and the *débris* caused by tearing down Castillo's old works. Most of it will be used in the new walls and in filling around the new battery. Besides, nearly all the timbers which are required to build up foundations and supports for the pans, settlers, and concentrators are dressed and ready to be set up. The pulleys, seven in number, with the exception of two of the smallest, are framed and completed; these two will be finished in a few days; in short, the carpenters' work is finely ahead. The blacksmiths' work is somewhat behindhand, and must be so for some time, as we have but one forge and only tools for it, consequently but one man can be worked to a good advantage, but as our blacksmith is a fast worker I think we can manage to get this branch up in due time. Sickness to some extent has also impeded us, as at different times nearly every man on the hacienda has had ague and fever; then, of course, one to two days' time lost by the party affected. I have had two attacks myself since my return from California, and they have pulled me down in flesh considerably. Why this country at this season of the year, where there has been no rain since last October, should engender ague and fever I am at a loss to divine, yet such is the fact.

Our ore pile is regularly and steadily increasing; the stock on hand is between 550 and 575 tons, and hereafter El Cristo will steadily increase its yield, as we have "struck" ore in the new tunnel; consequently the quantity taken out of the tunnel will be in excess, and in addition to what comes from the shaft in the upper works this tunnel, which has not cost over $500, is one of the best investments the company has made, for all the ore detached in it can be taken out in wheel-barrows, thus dispensing with the packing in leather bags, which is slow and expensive, when the shaft from above shall be intersected with this tunnel, which will lay bare and expose 75 feet perpendicular of the vein; almost any requisite amount of ore can be obtained from this mine. This intersection, Mr. Cullins thinks, can be accomplished in 8 months, and the beauty of it is the company is re-imbursed all the time in ore for the outlay.

To give you a better idea than I could do by detailing the transactions in this letter of one of the many difficulties I have to meet and overcome, I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with the matter. In consequence of the unsettled state of the country and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time; yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1,000 per week, and of course all that the proceeds of the sales of goods did not supply, had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all came through safe except in one

case. This occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1,000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about twenty miles out from the port, near the town of Comacho, six or eight armed men sprang into the road and with their guns leveled upon him forced him to dismount, and robbed him of $1,178 in money, his pantaloons and boots (the latter, however, being No. 12, were too large for any of the villains, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also at the same time opened a correspondence with Gen'l Corrona through the prefect, Col. Jesus Vega, at San Ignacio, who by the way is, I think, one of the most perfect gentleman I have met in the country, and I am of the opinion that but for the turn in military affairs which occurred a few days since, we would in some way or other have been re-imbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss. This military change to which I have made allusion is this: For several months past Gen'l Corona, with a very considerable Liberal force, has occupied all the country around Mazatlan, frequently skirmishing with the French troops almost in the streets of that city, but avoided risking a general engagement until about 18 or 20 days ago, when the French sent out a force, as report says, of 1,000 men. These Corona attacked and defeated with severe loss, capturing, it is said, some 5 pieces of artillery and a quantity of small arms. This success, of course, elated the Liberals and their friends very much; many of them thought they would soon be in possession of Mazatlan, but the chances of war are very uncertain, for a few days afterwards Lozada, an Indian, at the head of quite a considerable force of Mexicans and Indians in the Imperial service, came up from the south. Gen'l Corona attacked him and was repulsed, and in retreating met a large force which had been sent out from Mazatlan. The result was the total rout and almost entire dispersion of the Liberal army.

Dr. Hardy and Mr. Griffith was in San Ignacio when the advanced guard of the retreating army entered or rather passed through that place on their way to Cosala. They say the scene beggars description. The officials were at the time having a jollification over Corona's victory, which the entry of several general officers, with the information of their great disaster, changed immediately into a panic. The entire population of the place commenced to pack up what effects they could transport and to leave as fast as possible. The entire population has probably left, for fear of being killed by Lozada's Indians. And as the Liberals destroyed La Noria a few months since and confiscated a large amount of the property of its citizens, a good portion of which was carried to San Ignacio and consumed, it is thought the latter place will share the same fate. Under this state of affairs, much as Col. Vega and Gen'l Corona might desire to make good our loss, they are not now in a condition to do so.

I learn that the Imperialists design to garrison several of the towns between here and Mazatlan and restore their civil officers. Should they do so the road will be made more secure, and some of those robber bands commenced to steal in that road.

I wrote you fully in my last letter detailing the circumstances of the murder of William Grove and the finding of his body. Since then the liberal authorities have taken the matter in hand and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men if the prospect for plunder was sufficient to warrant the risk. When the officers arrested I had
26 him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman, who he killed previously, and sentenced to be shot, and before the execution of the sentence he confessed the murder of Grove, and revealed the names of his two confederates; these two would have been arrested before this but for the expulsion of the Liberals from the country. Now we will have to wait for the Imperialists to put their officers in power before we can act any further in the matter.

Our store is doing an excellent business. Our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill-work systematized as it should be, the store if kept well supplied will run the entire concern, thus reducing the cost of our labor about fifty per cent. To manage successfully this business in all its varied branches will require one of the most thorough and practical men of business that can be found. The fact that a man understands the amalgamation of ores and the process of working them is not evidence that he is competent to be your superintendent, unless he possesses the qualifications above mentioned in addition. Competent amalgamators can be employed in California and Nevada, and some are here out of employment, and I could employ one

to come when we were ready for him, but from the tenor of your last letters I judge you intended to take this matter out of my hands. This, however, is usually the case with many men. They imagine, while sitting in a comfortable office in New York, that they are more competent to manage the details of a large business in Mexico than the person on the ground and in charge of it. I have learned a good deal from experience in my management here, and after a task and labor that has been almost herculean, I have succeeded in bringing order out of chaos, and got our affairs well systematized and working with harmony and regularity in all its branches.

Up to April 1st, our ore from the La Luz and El Cristo mines, say at that time 500 tons, 400 of which was on the patio, had cost nine thousand dollars; this included the amount paid Castillo for working La Luz from June until we took possession, and the expense of making the new tunnel in El Cristo, or an average of $18 per ton. We have reduced this average to $15, delivered on the patio, and I think a further reduction may be calculated upon.

You wrote me for a statement of the books up to the 1st January; this I do not send for the reason that everything is in an unfinished state, and it would be impossible for me to render any statement that would give satisfactory information to the co., but when the works are completed and I return I will bring home a full statement of every account on our books which shall show the entire cost of the mill and buildings, the amount of ore on hand, and its cost, together with a statement of the business of the store; in short, a full and complete statement of the whole affair while in my charge. I purchased a set of books in San Francisco, and am keeping them myself, in double-entry form, and you may rest assured that for every dollar that passes through my hands shall be properly and amply accounted for; besides, with my manifold duties, which, since my return from San Francisco, have required my constant and whole attention, so much so, that I have not now the time to make an abstract from the books.

Y'r fr'd,

TH. J. BARTHOLOW.

La Abra Silver Mining Co. in account with Narciso Morga and Antonio Serabio.

Narciso Morga, as follows:

For freight on 17½ cargas corn, at $5, for Mr. Rice		$88.75
" " " 17 c. 3½, at 5½, for Mr. Rice		90.00
" 1½ cargas beans, at $14, for Bartholow		17.50
" 5½ " corn, at $7, for Bartholow		38.50
" packing ore from La Luz for Bartholow		8.25
		243.00
Paid as follows:		
By Jos. G. Rice	$8.25	
" cash, Bartholow	4.00	
" Bartholow's check	230.75	
		243.00

27 Antonio Serabio as follows:

For freight on 6½ cargas corn, at $5, Mr. Rice		31.25
" " " 5 c. 12 al, at $5½, Mr. Rice		28.81
" " " 28 c. 4 al, at $5, Bartholow		140.83
" " " 26 c. 1 al, at 5½, Bartholow		136.75
" " " ore ex. La Luz, Bartholow		11.81
		349.40
Paid as follows:		
By cash by Bartholow	$25.00	
" merchandise, Bartholow	1.96	
" cash, Bartholow	10.00	
" Bartholow's check	312.44	
		$349.40

Hacienda La Abra Silver Mining Co., Tayoltita, April 8, 1866.

TH. J. BARTHOLOW, *Sup't.*

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, April 10, 1866.

Señor Dn. ANGLE CASTILLO DE VALLE,
Durango:

DEAR SIR: I am in receipt of your esteemed favor of 21st ultimo, and also the goods to which it relates; these came to hand in good order and just in time, for at the date of their arrival we had used up the last pound of our powder, and but for the timely arrival of this train the work in our mines would have been stopped.

The translator who interpreted to you my letter ordering these goods made sad havoc with the translation. I ordered in my letter of Feb'y 21st eight cargas tallow, and you have sent me in place of tallow *eight cargas soap*. Whilst this error will not result in much loss, yet it gives me an overstock of soap at a higher price than I had supplied myself at Mazatlan, and besides puts me to great inconvenience in consequence of not getting the tallow I had ordered, and I now beg that you will forward to me with as little delay as possible:

8 or 10 cargas tallow, which I am greatly in need of for the purpose of making into candles. On the 13th of March I ordered from you 4 cargas costales (12 arrobas each), 1 box cigarros (dobles), 1 box puros (8 in a bunch), and 5 cargas powder. If these goods are not yet forwarded please send them with the above-mentioned tallow.

Your friend,

TH. J. BARTHOLOW.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, April 13, 1866.

Señor Don JOSÉ JUAN DIAS,
Santiago:

DEAR SIR: In reply to your favor of 6th inst., I beg to say that I cannot afford to pay five dollars ($5) for sheep, as beef here is much cheaper, consequently I am not willing to purchase at the price you name.

With regard to corn, I am desirous to purchase at the price you name, two dollars ($2) per carga, and the freight in proportion, which is, as I understand it, $5 per carga to San Dimas from Santiago, or about that rate. You, however, ought to have stated the price according to your views, *i. e.*, that is, the price of freight.

The flour I purchased of you last was of bad quality, and I do not want to buy any more like it, but if you will bring good flour I will purchase it at the market price. I have a good stock of lard, and do not wish to buy any more, but I will buy red pepper at a fair price, say $4.50 per arroba. With regard to purchasing your mules, as mentioned in your letter, I beg to say that there are several Americans here who will buy mules of good quality at a fair price.

Your friend,

TH. J. BARTHOLOW,
Superintendent.

P. S. I have plenty of packing for your mules here at fair prices and will have for several months.

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28 HACIENDA, LA ABRA SILVER MINING CO.,
Tayoltita, April 27, 1866.

Messrs. ECHEQURAN, QUINTANA & CO.,
Mazatlan:

GENTLEMEN: Your favor of 17th inst., covering account current, is at hand, and in reply beg to say that I have examined the latter and find it correct so far as I am able to judge of the items which are other than my drafts, with the exception of your charge of $280.60 for disbursing our money. This, I must say, I regard as an enormous charge. I have for the past twenty years kept accounts in Europe and the United States with chartered banks and firms, and this is the first instance such a charge has been made against me.

It seems to me that the duties on the last 30 pkgs. received from San Francisco are enormously high, viz, $452.62. The entire cost of the goods in San Francisco was less than $1,000, and one-third of them were mining tools. Has there not been some error committed in settling these duties?

I will see that Mr. Wilson pays the $68.46 he is owing you. I have never seen the landing certificate of the Tobo. All the documents relating to that shipment which came to me I forwarded to you.

Col. de Layneil and myself will start down to the port about the 7th proxo., when I will draw a draft on Mr. Garth for $10,000 in favor of Bank of California, and on the latter in your favor for a like sum for my credit. While in Mazatlan I will turn the superintending of the co. over to Col. de Lagniel, who has been appointed to succeed me.

I am worked down by my great exertions of the last four months. My health has given way materially.

Y'r friend,

TH. J. BARTHOLOW.

The Durango Silver Mines in ℅ current with La Abra Mining Co.

1865.				
Oct.	21.	To 2 lbs. black tea, at 2.50	5.00	
1866.				
	11.	" 25 lbs. pork and bacon, at 50c	12.50	
		" 8 lbs. pickels, at 25c	2.00	
		" 16½ lbs. butter, at 75c	12.37	
	20.	" 1 bunch envelopes	.25	
				32.12
		" cash paid for rubber coat in San F		17.00
		" your order paid		150.00
	1.	" 3 boletas enclosed to you	3.00	
	2.	" cash pd. Grassie by Dr. Hardy	80.00	
				83.00
	19.	" 350 lbs. greta, 10c	35.00	
		" 60 lbs. Mexican steel, at 30c	18.00	
		" paid freight on same to San Dimas	3.00	
	25.	" quinine and blue mass	1.50	
	27.	" 4 American axes, 3.50	14.00	
				71.50
	31.	" 1 bot. wine (omitted)		2.00
	2.	" 5 lbs. dried apples, at 37½	1.87	
		" brandy and gin for Mr. Carr	6.50	
				8.37
	10.	" cash paid Mr. McEwen by Scott		33.00
	31.	" bill m'd'ze by Mr. Carr		66.00
	8.	" 1,000 feet fuse returned		20.00
		" paid Antonio Savia, packing corn		230.56

CREDIT.

1865.			
	1.	By merchandise per bill	106.50
1866.			
	12.	" 1,200 feet fuse	24.00
	16.	" 2 lbs. 2-oz. solder	
	22.	" 1,000 feet fuse	20.00
Mar.	15.	" cash, $200, collection, $6	206.00
29	1866.		
Apl.	10.	By one share corn purchased	225.96
		" quinine and potassa	10.19
		" collection	2.00
		Bal'ce	118.90
			$713.55 $713.55

May 1, to balance due La Abra, $118.90.

The Guadalupe Mining Co. in ℅ with La Abra Silver Mining Co.

1866.				
April	1.	To cash pd. taxes at Quilita		$19.10
		" " pd. Correll's bill at Clark's by Wilson		2.25
	12.	" 1 bot. wine	$1.50	
		" salt	.50	
		" 800 brick (floor brick)	12.00	
	18.	" 1 bot. sweet oil	1.00	
	23.	" 1 lb. steel	.38	
		" 1 bundle cartridge paper	1.25	
				16.63
				37.98

Rec'd payment,

TH. J. BARTHOLOW,
Superintendent.

HACIENDA, LA ABRA SILVER MIN'G CO.,
Tayoltita, May 1st, 1866.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, May 4, 1866.

Señor Don ANGEL CASTILLO DE VALLE,
Durango:

DEAR SIR: I am in receipt of your favor of 24th ultimo, advising me of your having forwarded the tallow which I had ordered. For your prompt compliance with my request in this case I thank you.

Enclosed please find my check on Mess. Echeguran, Quintana & Co., Mazatlan, in your favor, for..... $2,760.59
Add goods furnished Don Juan James..... 74.18
Add cash furnished same..... 10.00

Amount..... 2,844.77

This is the amount of your invoice of January 8th, and which you will please pass to my credit. My clerk, in rendering you the % made by Don Juan James, forgot to add to it the ten dollars which that gentleman got in cash, and which he will doubtless recollect.

Col. J. A. de Lagnel has been sent by the comp'y in New York to relieve me, which is a source of great satisfaction to me, as my health has become seriously impaired, rendering it necessary that I leave the country. You will find the col. a gentleman of intelligence, and I trust your business relations with him will be as pleasant and satisfactory as mine has been to me.

Very truly, your friend,

TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, May 5, 1866.

Col. J. A. DE LAGNEL:

SIR: In reply to your note of this date I beg to say that I am too unwell to collect up, credit, and pass same on the books of the company the wages due our white employees, but you will find over the name of each employee on the ledger a memorandum of when he commenced work, with the rate of wages we are to pay. I will, however, call in to-day and to-morrow all our employees and get them to acknowledge the correctness of money and merchandise charged to them.

I enclose a memorandum of outstanding contracts yet to be filled, either partially or wholly.

I also enclose a memorandum of the mines, their names, location, claimed by the company. All that we are not now working are under "prorogue" until July, when you should make application through Don Angel Castillo de Valle, Durango, for an extension of the prorogue.

I also enclose a memorandum of goods and supplies, which I think the company will require to aid its operations during the ensuing rainy season.

The company own 12 mules and 10 aperajos. The titles to these mules I believe to be good.

With respect,

TH. J. BARTHOLOW.

HACIENDA MINA DEL ABRA Y CA,
23 *Mayo*, 1866.

ESTIMADO SEÑOR: En acuerdo con nuestro convenio tengo que anunciarle sobre el resultado de ocho (8) cargas y veinte y ocho (28) panochas y á mas diez y seis y medio (16½) de panochas quebradas.

Deseo que tiene Vd. consideracion en atencion á la verdad que la panocha no corresponde en peso á la muestra que Vd. me enseño y que pese yo mismo ni satisface á las condiciones de nro. convenio.

El excesive valor de $70 por carga solo fue admitido debido al convenio de Vd. bajo las sigtes. condiciones, á saber: Que la carga debia contenes como es costumbre el numero de 768 panochas y pesa cada una ó mejor dicho una con otra debia pesar doce (12) onzas. Delante de algunas personas he pesada varias partidas de veinte y cinco (25) y treinta panochas y he hayado que el peso mas alto de cada panocha es de diez y media (10½) onzas una con otra y algunas con peso á razon de diez (10) onzas.

Con tal motivo tendre la panocha en la bodega y deduciré el porciento que corespoda á la perdida ó falta habida, la cual aumenta hasta cerca de un catorce (14) por ciento.

Sirvase V. contestarme al instante conviniendo en que la diferencia habida en la panocha vendra á ponerla como acerca de sesanta ($60) por carga, y es lo mas que estoy preparado á pagarle segun los limites de nuestro convenio.

Fiando en que casi sera igual la differencia por el cargo que propongo.

Como siempre su ato. y S. S.,

J. A. DE LAGNEL.

Sor. D. PATRICIO LOPEZ,
San Juan.

[Translation.]

HACIENDA OF LA ABRA SILVER MINING CO.,
May 23rd, 1866.

DEAR SIR: In accordance with our agreement I have to inform you of the receipt of (8) eight cargas of corn and of twenty-eight (28) pieces of raw sugar (panocha), besides sixteen (16½) and a half pieces of raw sugar broken up (panocha quebrada).

I wish you to consider, in attention to truth, that the raw sugar does not correspond in weight to the sample that you showed me and which I weighed myself, neither does it satisfy the conditions of our agreement.

The exorbitant price of $70.00 per carga was only admitted, thanks to your agreement, under the following conditions, to wit: That the carga was to have, as is customary, 768 pieces of raw sugar (panocha), and that each piece was to weigh on an average (12) twelve ounces.

I have weighed before several persons lots of seventy-eight and thirty pieces of raw sugar (panochas), and have found that the most they weighed on an average was (10½) ten and a half ounces a piece, and the least ten (10) ounces.

I will therefore keep the raw sugar in the vault and deduct the (per) centage corresponding to the loss or deficit, which amounts pretty nearly to (14) fourteen per cent.

Be pleased to answer me at once, agreeing, on account of the difference found in the raw sugar, to sell me the same at $60 per carga, as that is as much as I am prepared to pay you, according to the limits of our agreement.

Trusting that in this way the difference per carga will be about even, I am ever your attentive and sincere servant,

J. A. DE LAGNEL.

Mr. PATRICIO LOPEZ,
San Juan,

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31 HACIENDA LA ABRA S. M. Co.,
26 *May*, 1866.

DEAR SIR: I have to acknowledge the receipt of your two letters, dated respectively April (brought by Mr. James) and May 15.

The amount of your bill will be paid, as requested, to the house of E., Q. & Co., in Mazatlan, the goods having arrived in good condition and agreeing with the invoice.

As to the $8 paid on account of Gen'l Bartholow, it will be duly credited to you, and you will, in addition, please accept the thanks of the general for your prompt compliance with his wishes.

I return a tomaguia for the Guia No. 123, of April 25th, 1866, and also for the Guia No. 91, of March 20, 1866, but I cannot find the other of which you speak.

Should it be found, the tomaguia will be duly forwarded.

It is with regret that I am compelled to inform you of the fact, but justice to myself requires that you should know that I was not here at the time the first goods arrived.

Trusting to have the pleasure of knowing you personally, I remain, y'rs with respect,

J. A. DE LAGNEL.

Sr. D. ANGEL CASTILLO DE VALLE,
Durango, Mo.

HACIENDA DE LA ABRA S. M. Co.,
Tayoltita, 27 *May*, 1866.

DEAR SIR: Since writing this morning I find myself obliged to address you again in reference to the account of Mr. Juan Tamés, who leaves us to-day for Durango.

He has purchased merchandise amounting to $135.27, and received cash advance of $33.62. Against this account he has one for packing metal, amounting to $198.72, which leaves a balance in the company's favor of $40.17.

You will please collect this amount from Señ. D. J. Tamés, and place it to my credit. I shall visit Mazatlan next steamer, and will probably secure a letter of credit on your house to meet payments in your vicinity.

Yours, respectfully,

J. A. DE LAGNEL,
Agent La Abra S. M. Co.

Señor D. ANGEL CASTILLO, *Durango.*

TAYOLTITA, *Mayo* 30 *de* 1866.

Sor. D. PATRICIO LOPEZ, *San Juan:*

MUY SEÑOR MIO: Me acuso el recibo de la grata de Vd. fecha del 23 del actual y á la vez de la llegada de la carga con setecientos cuarenta y nueve panes de panocha. Este asi como la primera partida falta en el peso convenido entrambos, ciendo este menos de doce onzas, ó una falta del cuatro por ciento del peso.

Las dos partidas resulten de este modo, los primeros ocho cargas (28), veinte y ocho panes con (16½), dies y seis y medio otras de pedasos, equivale á 8 cargas 53 panes y esto con (14) catorce por ciento descuenta del peso, vale solamente á razon de sesente pesos por carga ó.....	$484.00
La ultima partida consiste de (1) una carga de (749) setecientos cuarenta y nueve panes á razon de (4) cuatro porciento de el cuento como ariba dicho vale $67 por c. carga ó el total de.....	132.30
Con el total para ambas partidas.....	616.30

Como tenemos de ver dentro de cinco dias en su casa, en mi camino para el puesto, arreglamos definitivamente nuestra cuenta si conviene Vd. en la justicia de la rebaja que exijo, ó si no, la panocha como no esta recibida quedará á s. o.

J. A. DE LAGNEL.

[Translation.]

TAYOLTITA, *May* 30, 1866.

Mr. PATRICIO LOPEZ, *San Juan:*

MY DEAR SIR: I acknowledge the receipt of your favor of the 23rd instant, and also of a (1) carga of seven hundred and forty-nine pieces of raw sugar (panecho).

32 This, as the other lot, is deficient in the weight as agreed upon between us, it being less than 12 ounces, equivalent to a loss of 4 per cent.

The two lots show the following results:

The first of eight (8) cargas, (28) twenty-eight pieces each, and sixteen and a half pieces (16½) broken up, is equivalent to eight (8) cargas of 53 pieces each, which, with a discount of 14 per cent. in weight, is worth only at the rate of $60 per carga.....	$484 00
The last lot consists of one (1) carga of (749) seven hundred and forty-nine pieces, which, with a discount of 4 per cent. as above, is worth, at the rate of $67 per carga.....	$132 30
Total for both lots.....	$616 30

As I expect to see you at your house in five days, on my way to the port, we shall settle our account, in case you agree in the justice of the deduction which I desire; or, if not, the raw sugar which has not been delivered will not be received.

Yours, truly,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, *Junio* 2, 1866.

Sr. D. PATRICIO LOPEZ, *San Juan:*

SOR MIO: Por su propio de hoi recibi su carta fecha de ayer, y impuesto de su contenido, digo en contestacion que no me ha causado sorpresa alguna los procedimientos tan poco formales de Vd. en respecto á la compra venta de las diez cargas de panocha.

La culpa lo tengo yo, por haberme tratado con Vd. despues de qua falto en el cumplimiento de una contrata celebrada con el Sor. Gral. Bartholow. Está V. mui equivocado, al decire que compré la panocha por *numero*, y no por el peso; pues mui al contrario como pien lo sabe, porque en presencia de V. pesa bamos unos panes para verificar que llegaba este á doce onzas el pan. como me habia ofiecido.

Sin embargo, le remito á V. la L. por $700, con su proprio como me dice s. carta; bien satisfecho en haberle á Vd. conocido, tan luego, y á tan poco costo, pues no hai duda que V. pierde mas que yo, en el asunto.

A pesar que V. representa á que la panocha es de la propriedad de D. Felipe Salcedo como no he tratado con el, en el negocio no le considero con culpa alguna en la mala fé observado por V.

Sin mas asunto, soi de V., S. S. S.,

J. A. De Lagnel.

[Translation.]

Hacienda of La Abra, *June 2nd*, 1866.

Mr. Patricio Lopez, *San Juan:*

Sir: I received to-day by your messenger your letter of yesterday, and having noticed its contents, I will say in answer that I am not at all surprised at your informal proceedings in regard to the sale of the ten cargoes of raw sugar (panocha).

I am to blame for having dealt with you after your failure in fulfilling the contract made with Gen'l Bartholow. You are very much mistaken when you say that I bought the raw sugar by the piece and not by the weight. You well know, on the contrary, that I weighed before you some pieces to see if they had the weight of 12 ounces you had agreed upon.

I send you, however, by your messenger a draft for $700, to which you refer in your letter, well satisfied in having known you so soon and at so small expense, as there is no doubt that you lose more than I do in the matter.

Notwithstanding what you say, that the (panocha) raw sugar belongs to Mr. Felipe Salcedo, as I had no dealings with him in this matter I do not lay any blame on him for the bad faith with which you have treated me.

I am, your sincere serv't,

J. A. De Lagnel.

Hacienda de La Abra S. M. Co., *6th June*, 1866.

Mr. W. G. S. Clarke:

Dear Sir: Your train, bringing (28¼) twenty-eight and one-third cargas has just arrived, and will return at once.

For your efforts in behalf of ——— I have to thank you, as also for your kind attention to Mr. Scott during his sickness.

You will oblige me by correcting a mistake I made yesterday. It was in receipting to Florentio Silvia for twenty cargoes (20) instead of sixteen (16), as was the case.

33 I beg you to stop payment of the four cargas erroneously acknowledged as received, as he informed me the bill would be paid at Comacho, I presume by you, perhaps by Mr. Cole.

I have issued to your arrieros 18 almudes of corn, for which you will settle when I see you in a few days.

As some money was needed to feed your train down I have advanced twenty dollars to the same party.

Respectfully,

J. A. De Lagnel.

Hacienda la Abra, S. M. Co., 9 *Junio*, 1866.

Sor. D. Jesus Ma. Gurrola, *Gavilanos:*

Mui Señor Mio: Como en estos dias debe expirar el termino concedido á la compania que represento; como proroga para el ampara de las minas de su propriedad, no trabajadas, á razon de las circunstancias bien conocidas y notorias, y como es que todavia no hai esperanza alguna de que normalizan las cosas, he creido necesario pedir una proroga de seis meses mas, para el cual aqui va incluso el pedido necessario y le suplico á V. que tomar en molestia de atender á ello en la forma debida, y que me lo devuelvan lo mas pronto que pueda convenientemente á la vez me mande carta cuenta de los gastos que puede ocurir para cuvrilas en el acto.

Despence Vd. la franqueza de tanto molestia á una persona desconocida; pero estoi cierto que es amigo de.

S. aftmo. y S. S. S., Q. B. S. M.,

J. A. De Lagnel,
Sup'd't La Abra S. M. Co.

[Translation.]

HACIENDA OF LA ABRA SILVER MINING CO.,
June 9th, 1866.

Mr. JESUS M. GURROLA, *Gavilanes:*

SIR: As the term granted to the company I represent for the protection of the unworked mines of their property is to expire in a few days, on account of notorious and well-known circumstances, and as I do not see any hope yet of perfecting things, I have thought necessary to ask for an extension of six months, for which I herewith inclose the necessary petition, and request you to take the trouble to attend to it in due form and to return it to me as soon as it is convenient, sending me at the same time an account of the expenses which may occur, so as to pay them at once.

Excuse the liberty I take in troubling so much an unknown person, but be sure of the friendship of your most affectionate and sincere servant,

J. A. DE LAGNEL,
Superintendent La Abra S. M. Co.

Financial statement of affairs of the La Abra Silver Mining Co., as per the books at the hacienda.

1866.		Dr.		Cr.
31 May.	By cash paid on account drafts on company			$15,300
	" " Gen'l Bartholow's check on B'k of Cal			75
	" " premium on $15,075, at 2 per cent			301 50
	" " ditto " 300, " ½ per cent			2 25
	" gold value of currency $310, rec'd in N. York			227 94
	" sales of m'd'se for month of May			2,900 96
	" cash from Durango S. M. Co. on ac			109 89
	" cash received as a loan from D. Sullivan			231 00
	CONTRA.			
"	To cash paid for m'd'se purchased by G'l Bartholow prior to this date, including amount overdrawn from Echeguran, Quintana & Co	$9,586 18		
	" am't paid employés and foreign workmen, and for materials on ac., due 1st May	3,511 50		
			$13,097 68	
34	To amount paid for m'd'se and provisions purchased by myself, including freights and charges as rendered to date	$1,796 65		
	To amount memoria La Luz mine	1,506 46		
	" amount memoria El Christo	1,073 68		
	" amount memoria hacienda	525 32		
	" amount for house expenses	133 58		
	" am't personal expenses from N. Y	360 69		
			5,406 38	
	Balance on hand		644 48	
			19,148 54	19,148 54

ASSETS.

May 31.	Ore from La Luz during May, tons		31⅓
	Ore from El Christo " " tons		46¼
	Remaining at La Luz, tons		80
	Remaining at El Christo, tons		50
	Average cost per ton, delivered		$17 00
	" " " " not yet delivered		$13 50
" 31	Outstanding accounts of Gen'l T. J. Bartholow, due Angel Castillo del Vallé, for sundries, at 4 months, due July 19, '66	$2,080 48	
"	" Echenique, Peña & Co. m'd'se, due 13 June, '66.	1,834 80	
"	" Careaga & Co " " 12 June, 1866.	665 42	
"	" Echeguran, Quintana & Co. " 10 Oct., 1866.	1,663 07	
"	" Juan J. Caseres, " 15 Sept'r, 1866.	1,000 00	
"	" Angel Castillo, " 26 Aug'st, 1866.	2,217 19	
			$9,460 96

Financial statement of affairs of the La Abra Silver Mining Co., etc.—Continued.

May 31.	Workmen unpaid at date and sundry contracts pending	$1,572 00	
	Bal. in favor of I. V. Hardy, G. F. Griffith & T. J. Bartholow, as per ac	1,475 91	
	Balance due Guadalupe S. M. Co	895 58	
			$3,943 49
	Balance of G'l B.'s debts remaining unpaid		$13,404 45
	Bills on time purchased by J. A. de Lagnel:		
	Echenique, Peña & Co., m'd'se due Sept'r 12, '66.	1,034 67	
	José V. de Laseaga, quicksilver, Sept'r 16, '66	1,328 93	
	Excheguran Quintana & Co., Jan'y 12, '67	986 21	
	Due, accrued to workmen during the month, balance unpaid	954 00	
	Corn to be paid for on delivery, two lots	870 00	
			5,183 81
	Sum total of debts of the La Abra Co., 31 May, 1866		$18,578 26

Respectfully submitted.

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

D. J. GARTH, Esq.,
Treasurer, La Abra S. M. Co.,
No. 18 *New street, New York.*
(Duplicated.)

HACIENDA DE LA ABRA S. M. CO.,
10 *Junio*, 1866.

SOR. MUI MIO: Este tiene por objeto acusar el recibo de treinta cargas, una fanega con nueve almudes de mais, por el arriero Marcelino Flores, á cuenta de nuestra contrata celebrada entre V. y el Sor. Gral. Bartholow.

No he pagado el arriero, comome requiere porque lo tengo entendido del Sor. Bartholow que este mais hasta compeltar ciento cincuento fanegas, asi como la polvora, fue tratado con plaso de cuatro meses.

Sirvase informarme si estoi bien endendido del asunto ó no, y cuanto mas mais, tiene listo para mandarme, y cuando lo puedo esperar.

Sin mas por ahora. Soy de Vnd. como Spre., S. S. S.,

J. A. DE LAGNEL,
Sup't L. A. S. M. Co.

[Translation.]

HACIENDA OF LA ABRA S. M. CO., *June* 10, 1866.

DEAR SIR: I write this to acknowledge the receipt of thirty cargas, one bushel (fanego), and nine *almudes* (a 24th part of a bushel) of corn, brought by the muleteer Marcelino Flores, on account of the contract between you and said Bartholow.

I have not paid the muleteer, as you asked me, because I understand from Mr. Bartholow that this corn and enough to complete one hundred and fifty bushels, as also the gunpowder, was contracted on four months' time.

Be pleased to inform me whether I am well posted in the matter or not, and how much more corn you have ready to send me, and when I can expect it.

I am ever your sincere serv't,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

HACIENDA DE LA ABRA,
Tayoltita, Junio 25, 1866.

Señor D. JUAN ANTO. DIAZ,
Santiago Papasquiero:

MUI SEÑOR MIO: Al salir para el puerto hace catorce dias, no habiendo llegada ni una parte de la carga de Vd. y temoroso de la falta de ella, por no tener por o. parte de V. compromiso cierto de tal entrega, y por otra parte estando la temporada mui avanzada, me aseguré del mais que necesitára por otro lado de modo que hoi al volver y encontrar el de V. en casa, me encuentro algo corto de recursos para hacerle á V. el pago debido.

Siento en lo infinito tal trastorno de mis calculus pero ha sucedido por razon de varias circunstancias sobre los cuales no ha estado en mi mano evitar.

Propongo recibir el mais que hoi esta en el camino asi como este que ya tengo recibido y su importe total pagaré con n. h. de noventa dias, pagadera en la Ciudad de Durango.

Espero que este propuesto le encuentra en aceptacion de Vd. scendo lo mejor que puedo hacer. Sin mas asunto por ahora.

Soi de V. S. S. S.

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

[Translation.]

HACIENDA OF LA ABRA,
Tayoltita, June 25th, 1866.

Mr. JUAN ANTONIO DIAZ,
Santiago Papasquiero:

DEAR SIR: On leaving for the port fourteen days ago without having received any part of your cargo, and being afraid of not getting it, as I have not made a special engagement with you for such a delivery, and as the season is, on the other hand, very far advanced, I secured, at some other place, the corn that I needed, so that finding yours on my return I find myself a little short of funds to make you the required payment.

I regret exceedingly the upsetting of my calculations owing to several circumstances over which I have had no control.

I propose to you to receive the corn that is now on the way, as also that already delivered, and to pay for it with a draft at 90 days' sight, payable at the city of Durango.

Hoping that this proposal should meet with your approval, it being the best that I can make, I am your sincere servant.

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

36

MAZATLAN, MEXICO, 16 *June*, 1866.

EDWARD H. PARKER, *San Francisco:*

DEAR SIR: I inclose herewith a check on Bank of California for two hundred and ninety dollars, and request that you will acknowledge its receipt by the return steamer.

This closes the outstanding account.

Yours, respectfully,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

MAZATLAN, MEXICO, 16 *June*, 1866.

W. C. RALLSTON,
Cashier Bank of California, San Francisco:

SIR: Enclosed herewith I send duplicate drafts on D. J. Garth, of New York, for fifteen thousand dollars, payable at sight in gold coin.

Against this I have drawn on the Bank of California for the following amounts, viz:

In favor of Echenique, Peña & Co	$12,951.24
In favor of Saujurjo, Argeres & Pajol	1,318.56
In favor of Brodie & Co	65.20
In favor of Edward H. Parker	290.00
In favor of Weaver, Wooster & Co	375.00
	$15,000.00

You will credit me with the current rate of premium, whatever that may be, and advise me of your action by return steamer.

Should you deem it requisite communicate with Mr. Garth by telegraph, as requested in your letter of May.

I feel some surprise that I did not hear from you by this steamer.

You will perceive an erasion both in this letter and on the draft. I made it to correct an error.

Very respectfully,

A. DE LAGNEL,
Sup't La Abra S. M. Co.

MAZATLAN, MEXICO, 16 *June*, 1866.

Messrs. BRODIE & CO., *San Francisco:*

GENTLEMEN: Enclosed please find check on the Bank of California for sixty-five dollars and twenty cts., that being the balance due on your account.

You will oblige me by acknowledging the receipt of this money by the return steamer.

Respectfully,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

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37 MAZATLAN, MEXICO, 16*th June*, 1866.

Messrs. WEAVER, WOOSTER & CO.,
San Francisco:

GENTLEMEN: Enclosed please find my check on Bank of California for three hundred and seventy-five dollars, being amount of your bill received by last steamer.

Please acknowledge the receipt of this money at your earliest convenience.

Respectfully,

J. A. DE LAGNEL,
Sup'd't La Abra S. M. C.

HACIENDA LA ABRA, *Tayoltita*, 28 *Junio* 1866.

Señor D. JUAN A. DIAZ,
Santiago Papasquiero:

MUY SEÑOR MIO: Hace diez y siete dias al salirme de aqui para el puerto del mais contratada lo cual no llegaba y acordandome de relativo á la entrega de veinticinco ó trienta cargas asegurarme de este articulo por otro parte, para no quedar escaso, y por compre por otro parte.

A mi vuelta encontra en casa una parte del mais de Vd. y me informe el arriero que mas venia en camino.

Porsupuesto aquello ya racibido le sera payado pero el resto para llegar, habiendo, ya complido el plazo especificado, no me obligad recibor.

Sin embargo como algunas circunstancias que no este en mi evitar, hace, que me es imposible pagar al contato aun por lo recibido; propongo á Vd. recibir lo demas todo, y pagarle con nuestra letra de noventa dias pagadera in Durango.

Le he facilitado al enviado D. Candelario Diaz, á su pedido, unos ciucuenta y dos pesos, los que he sentado á la cuenta de V. y me hace el favor de decirme si podré cargarle á V. una cuenticita de casa de diez pesos que me debe el mencionado Diaz porsupuesto á cuenta del mais.

Soi de V. S. S. S.,

J. A. DE LAGNEL.

[Translation.]

HACIENDA OF LA ABRA, *Tayoltita*, 28*th June*, 1866.

Mr. JUAN A. DIAZ,
Santiago Papazquiero:

SIR: On my departure for the port seventeen days ago, of the corn contracted for, which did not arrive, and remembering that relative to the delivery of twenty-five or thirty cargas, to assure myself of getting this article some place else, so as not to be short, and by bought at another place.

On my return home I found part of your corn, and the muleteer informed me that some more was on the way.

The corn already received will, of course, be paid for, but the balance that is to come, as the time fixed has already elapsed, I am not obliged to receive.

As some circumstances, however, which I can not avoid make it impossible for me to pay cash for that already received, I propose to you to receive the whole balance, and pay for it with our draft, payable at Durango ninety days after sight.

I have given the messenger, Candedelario Diaz, fifty-two dollars, he asked me for, which I have charged to your account. Do me the favor to tell me if I can charge to you a small bill of ten dollars which the said Diaz owes me, of course on ac't of the corn.

I am yours,

J. A. DE LAGNEL.

TAYOLTITA, 23 *de June*, 1866.

DEAR SIR: Please accept my thanks for the readiness to assist me, manifested by yourself. Mr. Bryant had, however, already commenced making the rivets and many more were required than you had to spare.

I am again compelled to ask your assistance in the matter of shingling nails, ours are exhausted, and my roof only partly on. You will therefore oblige me greatly by sending by the bearer of this about seventy-five pounds (75 lbs.) of shingling nails, or if you have not got them, send six-penny nails.

38 I would also request that you let me have two or three brooms (corn) for house use. Please send bill with the goods. You will oblige still further by saying to Mr. Carr that when he is able to work I should like to see him, for we need the services of a competent mason now.

The Mexican mason from San Dimas left, a day or two since, because I was unwilling to continue him at $2.50. His work has all fallen down, and I want him to restore it, the other masons being stone workers only.

Please endeavor to get him back, if you can; send him over to work at old rates, if we can do no better.

Yours, truly,

J. A. DE LAGNEL.

J. G. RICE, Esq., *Sup't, etc.*

HACIENDA DE LA ABRA S. M. CO.,
Tayoltita, 6 *July*, 1866.

Messrs. ECHENIQUE, PEÑA & CO.:

GENTLEMEN: As I can not visit Mazatlan at this time, I have to ask at your hands the favor of settling one or two bills, which are due.

You will oblige me by placing with the house of Messrs. Echeguran, Quintana & Co. to the credit of Sr. D. Angel Castillo del Valle, of Durango, the sum of two thousand and forty-eight dollars and thirty-one cents ($2,048.31), which amount will be due by the time this reaches you.

Please take a receipt for this amount in my name, and forward it to me, with the mail matter coming up. I also have to ask that you purchase a draft on San Francisco, Cal., for fifteen hundred dollars in coin, in favor of John G. Edgar, and make it payable to himself or order.

This draft you will please inclose with the accompanying letter, sent herewith, and directed to John G. Edgar, San Francisco, California, taking the precaution to send it by Wells & Fargo's Express.

Such mail matter as there may be for me or the men employed here, a list of whose names I send herewith, you will please deliver to Mr. George Grassie, who will hand you this.

You will oblige me by sending a list of letters sent up, with the charges or expense, if any, opposite to each name, that I may charge or collect it here.

With respect, your ob'd't serv't,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA S. M. CO.,
Tayoltita, 6 *July*, 1866.

SIR: At the request of your brother, who is now employed here, I send you a draft (payable in coin, in San Francisco) for fifteen hundred dollars. I trust it will reach you speedily and safely, of which I have no doubt, having sent it by Wells & Fargo's Express.

Very respectfully,

J. A. DE LAGNEL, *Sup'd't.*

Mr. JOHN G. EDGAR,
San Francisco, California.

List of names of persons at the La Abra Co.'s works for whom letters from Europe or the United States may arrive.

Alfred Bryant.
J. Edgar.
A. B. Elder.
Dan. Sullivan.
James Collins.
J. W. Green.
J. Keeghan.
Richard Honith.
Charles E. Norton.
Francisco Dominguez.
(And mail matter for myself, private or otherwise.)

N. B.—Please remember to make a list of names of the persons for whom *letters* are sent up by the couriers, and charge opposite each the number of letters sent and account of postage or express charges paid on each account, in order that I may collect the same here.

39 I will further request you to make a close and water-tight package of the letters, and seal the same.

Very respectf'y, etc.,

J. A. DE LAGNEL, *Sup't.*

Messrs. ECHENIQUE, PEÑA & CO.

HACIENDA DE LA ABRA S. M. CO.,
Tayoltita, 6 July, 1866.

GENTLEMEN: By this courier I write to Messrs. Echenique, Peña & Co., requesting them to deposit with you, in favor of S'or D. Angel Castillo, of Durango, the sum of two thousand and forty-eight dollars and thirty-one cents ($2,048.31), that being the balance on our accounts due to-day.

You will oblige me by advising me of the receipt of the sum specified.

The three letters entrusted to my care by S'or D. Pedro Echeguren were duly despatched to the postmaster at Gavilanes by a courier, there being no other means of forwarding them.

I acted thus, fearing that the letters might be of importance, and therefore would not risk delay.

With best wishes for all, I remain yours, respectfully,

J. A. DE LAGNEL, *Supdt.*

Messrs. ECHEGUREN, QUINTANA & CO.,
Mazatlan, Mexico.

HACIENDA DE LA ABRA S. M. CO.,
Tayoltita, 6 *July,* 1866.

D. J. GARTH. Esq're,
Treasurer La Abra S. M. Co.:

DEAR SIR: For some days I have been feeling so ill as to be almost wholly incapacitated for the discharge of any duty, and am now momentarily awaiting a chill, which gives notice of its near approach.

Perhaps it may afford you a better insight into my actual condition when I tell you that I have had them now for five or six days consecutively, with burning fever and great consequent exhaustion.

Knowing, however, your deep interest and anxiety respecting the completion and working of the mill, I nerve myself to give you some little light respecting the advancement of the work.

To Mr. Adams I would also write, but my feelings forbid the attempt.

Since my last the roof of the mill has been nearly completed, and will be entirely in a few days.

During my absence at Mazatlan the first heavy rain fell, and owing to the want of a good foundation in a part of our mill wall, the heavy pressure of water from the hill-side done it some damage, and which, owing to the great scarcity of masons, could not be repaired at once, but is now rapidly being put in a better condition than at first.

There now remains to complete the reverberating ovens, refining furnace, and retort furnace, and I am about to commence to grade off a place near the mill for them, which will be a comparatively short job. The grading for the site of the boiler is complete, and the necessary walls will be commenced next week. The iron work is progressing slowly, having but one smith and helper, but I trust that by another month the pans will be up and in their place.

The ditch, as I said in my last, I look upon as an independent work, and which should have been finished before the rainy season.

I had quite a long stretch of ditch walled up, and the arch thrown over a part of it, to prevent its being filled in by the wash of a small creek which crosses its route at right angles. The rain came upon us, however, before the masonry got well hardened, and the waters of the creek carried a part of the arch away, and I have concluded to spend no more upon this work at a risk, but await the dry season. I can, by clearing out the ditch, bring water enough to the mill to run it when we may be ready so to do, and this without much expense.

In consequence of the heavy outstanding indebtedness, and which I must meet to

re-establish the credit of the co., I decided to lessen the expenditures, and reduced the working force at the mines nearly one-half, being obliged also to suspend the working of the Cristo on account of foul air in the lower level.

40 The payments made formerly to workmen and others in cash are now made in cash and goods, one part of the former, and two of the later.

I inclose here a statement of our cash account, to which and to my explanation I beg your attention. I am now in bed with a severe chill, and am writing this by an amanuensis.

Hoping to give you a lengthy and more thorough report by next mail, yours, respectfully,

J. A. DE LAGNEL, *Supdt.*

HACIENDA DE LA ABRA,
July 6th, 1866.

Jos. G. RICE, Esq're,
Supt. Durango S. M. Co., San Dimas:

SIR: By the bearer I send you a package of mail matter, which you will please instruct your carrier to deliver.

I will be pleased to accept your proposal relative to my bearing one-half the expense of the express to Mazatlan, and you will please instruct him also to call at the house of Echenique, Peña & Co., upon returning from the port, to receive such matter as they may have in care for me, and you will forward such to me by express upon its arrival.

I would thank you to send over the mason Apolonio as soon as you can conveniently.

Excuse brevity, as I am sick and in bed with severe chills.

Yours, respectfully,

J. A. DE LAGNEL, *Supdt.*

HACIENDA DE LA ABRA,
Tayoltita, Julio 13 *de* 1866.

Señor D. JESUS MA. GARROLA,
Gavilanes:

ESTIMADO SEÑOR MIO: Habiendoseme V. dispensado, con tanto bondad, mi molestia del otro dia, vuelvo á occuparle con un asunto del mismo clase, siendo un pedido para la proroga de la mina del Promontorio, propriedad de las mismas personas que represento aqui, el cual pedido debia haber sido incluso con el de las otras de la compañia, y no fué por mi descuido, y aprovecho de la presente oportunidad para enviarselelo, para que se sirve atender á ello asi como al otro. Contando V. siempre en que s. c. cubridora de los gatos que incurra será paganda a la vista.

Accepto V. saludes y espresiones de mi alta consideracion y respecto.

Soy de Vd. Señor, su afeco y S. S. S., etc.

J. A. DE LAGNEL, *Supdt.*

36 [Translation.]

HACIENDA OF LA ABRA,
Tayoltita, July 13, 1866.

Señor Don JESUS M. GURROLA, *Gavilanes:*

MY DEAR SIR: As you have been so good as to excuse the trouble I gave you the other day, I come to you again with a matter of the same kind, it being the petition for the extension of the time for working the mine Promontory, belonging to the same persons whom I here represent, which petition ought to have been sent, together with the others of the company, but was not, thanks to my oversight. I avail myself of the present occasion to send it to you in order that you be pleased to attend to it at the same time as the other, being sure that your account of the expenses in this matter will be paid at sight.

Accept the assurances of my high consideration and respect.

I am, sir, your most affectionate and sincere servant,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

40 TAYOLTITA, 25*th July*, 1866.

Mr. J. G. RICE:

DEAR SIR: The mail-matter forwarded by the Mozo Paz was received in good order, and the amount ($20) of twenty dollars duly credited to the Durango S. M. Co.

I am obliged to you for your efforts to procure me masons, but believe that at present we are doing pretty well, though another *stone* mason would perhaps not be amiss,

provided he be not too high-priced. The brick-work requiring immediate attention is all done, and Arriola can do the rest. I am very glad you are succeeding so well, and trust that each day may add to your good fortune. As to the communication, shown to me by Mr. Grassie, and herewith returned, I do not think there is any necessity for action, and therefore do not sign it or add anything to it.

Desiring to ascertain truly the grade of the ditch, I have to ask the loan of your level, about which we have already spoken. I would send for it, but presume you would prefer to select your own man, some one you know to be careful.

In conclusion, I would desire to know if it will be convenient for you to settle up your account, as I shall very shortly need the money here.

Yours, truly,

J. A. DE LAGNEL.

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41 HACIENDA DE LA ABRA, *Julio* 26, '66.

Señor D. ANTONIO ARAIZA,
Guaricme:

MUY SEÑOR MIO: En su carta del 5 de May, del presente año, y dirijida al Sor. Cervantes, añadio Vd. una notita relativo á la historia de la mina Promontorio que carecio V. enviarle al ex-admor. de esta Hacienda, ol Sor. Gl. Bartholow, como el le habia esplicado.

Como esta carta allegó á este en los dias de la salida del referido Señor para los E. U., estaba yo encargado por el asi como por los proprietarios de recibir la referida relacion de Vd. para remitir selos, por lo tanto tomo la libertad de molestarle suplicando se sirva tener la bondad de mandarme la historia especificada para los usos refiredos ademas como tengo interes en saber yo, las tradiciones de una mina tan mencionada.

Sin mas por ahora, soy de Vd. afecs. y S. S., etc.,

J. A. DE LAGNEL.

[Translation.]

HACIENDA OF LA ABRA, *July* 26, 1866.

Señor D. ANTONIO ARAIZA, *Guaricme:*

SIR: Your letter of the 5th of May, of the present year, addressed to Mr. Cervantes, contained a postscriptum in regard to the history of the Promontory mine, which you promised to send to Gen. Bartholow, the ex-superintendent of this negotiation, who had asked you for it.

As said letter was received here when the above gentleman was preparing to leave for the U. S., both he and the owners have requested me to receive your history and send it to them. I take, therefore, the liberty to trouble you with the request that you be kind enough to forward it to me for the above purpose. I am besides interested in hearing the traditions of such a famous mine.

I am, your most affectionate and sincere servant,

J. A. DE LAGNEL.

TAYOLTITA, 27 *July*, 1866.

DEAR SIR: Please accept my thanks for the level, which arrived safely a few minutes since, together with the notes of yourself, the prefect, and Col. Valdespino.

You must pardon me for asking you for the balance in your hands, but I need it very much, having exhausted my ready money.

As to the Rosario & Carmen Co.'s bill, you will please not include that now, as there is some acc'ts pending, and, by arrangement between us, I have to see Dr. Carmen himself first.

Whatever the balance may be, if against us, of course I will promptly pay.

I thank you for the hints and information you give me respecting the forced loan. It strikes me as rather strange that one-half of the tax should lie between you and myself.

I am powerless to comply with the money part, not having the wherewithall.

Col. Norton joins me in kind regards to you.

Yours, truly,

J. A. DE LAGNEL.

J. G. RICE, Esq'r,
Supt. Durango S. M. Co

HACIENDA DE LA ABRA, *Julio 28de*, 1866.

Sor. Gefe Politico del Mineral de San Dimas:

Su oficio de ayer llego á mis manos en debido tiempo, y impuesto de su contenido, relativo á su prestamo ó contribucion, que exije de los vecinos del districto, para el costeo de la fuerza del Sor. Coronel Valdespires, contesto en el acto.

De los renglones que V. me pide, y de que tengo, le mando una parte y espero que le sera utiles y aceptables. En respect al dinero efectivo, siento tener que decirle que me es imposible remitir aun poco, porque no tengo agui, ni aun lo necessario para cubir mis muchos y constantes gastos.

Le suplico tomar en consideracion, que esta Hacienda ha traida ya, miles sobre miles de pesos, al pais, de la cual suma casi toda ha sido gastado en este mineral mismo, entre la gente menesterosa, y una suma considerable en derechos pagados á la tesoreria del partido, bajo cuya bandera milita el Sor. Col. Valdespiros, y de toda este suma no hemos recibido hasta hoi como es notorio y publico, ni un solo peso. 42

Le remito á V. dos piezas de mahon azul, y dos piezas de manta conc el el valor de setenta cinco pesos con sesenta y cinco centaros, de la cual sirvase remitirme el correspondiente recibo, para cubrirme con la compania que tengo el honor de representar.

Añado en conclusion de esta, que me es muy estraña que, siendo la suma total de le contribucion peruida $1,200 la cuota de las dos Compañías Americanas llega á la mitad de ella. Cuando hai en el districto varios vecinos que tienen proporciones considerables.

Soi de V. Señor mio. Su ato. y S. S. S., Q. S. M. B.,

J. A. DE LAGNEL.

[Translation.]

HACIENDA OF LA ABRA, *July* 28, 1866.

To the Gefe Politico of the San Dimas mines:

In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith.

I send you part of the articles I have and which you ask me for, hoping that they be useful and acceptable to you.

As regards the cash I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the necessary amount to defray my many and constant expenses.

I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Col. Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mahon and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, in order that it may serve me as a voucher to the company I have the honor to represent.

In conclusion permit me to add that it is very strange to me that the total amount of the tax being $1,200 the share allotted to the two American companies should amount to half that sum, when there are in the district several residents who have considerable property.

I am, sir, your sincere servant,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, *Julio* 28 *de* 1866.

Sor. Coronel D. J. VALDESPINO,
San Dimas:

SEÑOR MIO: Impuesto por su grata de ayer, de la situacion triste en que se halle, por el carecimiento de secursos, y de que piensa V. retirar del Districto pudiendo hacerse de recursos para tal movimiento.

Entendido de la mucho necesidad que sufra y considerando, como V. mismo me dice, los muchos males que sufrariamos si con su fuerza, viniera par aca, hayo cuanto puedo para allanar la situacion y mando ála gefatura del districto unos dos piezas mahon y dos de manto, sienda estos los renglones que tengo de los articulos mencionados, de mas necessidad.

Me es imposible contribuir en dinero hacia allanar el abastecimiento de lo que hoi le hace falta.

Sirvase V. considerar que nuestra Hacienda de beneficio no esta completa y por lo tanto inproductivo, sin contar con los muchos gastos que todavia tenemos que hacer,

y esto con el tiempo de aguas encima el dinero escaso y lejos y la situacion normal politico, que no deja de causamos graves perjuicios. No estoi por lo tanto, en condicion para prestarme como V. desea a la pedida del Sor. Gefo Politico, pero le remito lo que tengo, y desco que sean acceptados, como indice de mi buena voluntad.

Supongo, que, por supuesto habiendo contribuido lo posible, puedo seguir en mis traba jos sin temer la interrupcion que causa la venida de una tropa armada.

Soi de V. Señor, mio su artento, y S. S. S., Q. S. M. B.;

J. A. DE LAGNEL.

[Translation.]

HACIENDA OF LA ABRA, *July 28th*, 1866.

Col. D. J. VALDESPINO, *San Dimas:*

SIR: Your favor of yesterday informs me of the sad situation in which you find yourself for the lack of resources and of your intention to procure them preparatory to leaving the district.

43 Understanding the great need that you are in and considering, as you yourself state, the many evils that we would suffer if you should bring your forces here, I do all I can to overcome the difficulties, and I have sent to the political chief of the district two pieces of mohair and two of bleached cotton, those being the only things among the necessary things mentioned which I have.

It is impossible for me to contribute with money in order to provide you with what you need to-day.

Be pleased to consider that our reducing works are not complete, and therfore unproductive, without reckoning the many expenses that we yet have to make, the proximity of the rainy season, the scarcity of money, and the abnormal political situation, which can not but cause us serious damages.

I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will.

I suppose that having contributed with what I can I may, as a matter of course, resume my work without fearing the interruption that would be caused by the arrival of armed forces.

I am, sir, your attentive and sincere serv't,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA,
Tayoltita, 31 *July*, 1866.

Mr. J. G. RICE,
Supt. Durango S. Mines:

DEAR SIR: I hasten to acknowledge the receipt of your note of the 29th inst., and also of one hundred dollars, in silver, paid on account.

I enclose herewith a statement of your account, as appears by our books, differing from yours a few dollars, in your favor, however.

If there should be anything omitted by me please correct such error and inform me of it.

I send you two bottles of mustard as requested, price $1 each; you will find them included in the bill herewith.

As to the forced, voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect.

You can not have failed to notice that the exact half of the whole levy was laid upon you and myself, a fact I brought to the attention of the parties interested.

I feel obliged to you for your frequent notes and kind offices generally, and would be pleased to see more of you here or at home, but circumstances forbid.

Please keep me advised of events passing; I regret to announce the death, yesterday, of Mr. Dominguez.

Yours, truly,

J. A. DE LAGNEL.

The Durango Silver Mines to La Abra Silver Mining Co., Dr.

1866.		
May 1.	For balance as per Gen'l Bartholow's books	$110.09
June 16.	" cash from J. A. De Lagnel	600.00
July 31.	" 2 bottles mustard	2.00
		712.09

The Durango Silver Mines to La Abra Silver Mining Co., Dr.—Continued.

CONTRA.

1866.			
May 6.	By cash from Mr. Rice		$61.89
May 15.	By cash (Mr. Graesie)		48
" "	2 trowels		3.50
22.	" 1 arroba wicking		25.00
June 20.	" 25 cargas of corn, at $15		375.00
25.	" sundries (nails and brooms)		6.50
July 6.	" payment to Correo		1.00
26.	" share of expense of Correo to Mazatl'n		20.00
30.	" cash		100.00
			$640.89
	Balance due La Abra S. M. Co		$71.29

44

MAZATLAN, MEXICO,
16*th August*, 1866.

D. J. GARTH, Esq're,
La Abra S. M. Co.:

DEAR SIR: Not being here last month, I received your mail matter by the hands of a courier I sent down. Therefore could not easily acknowledge the receipt of the letters he brought four weeks since of the following dates, viz, 11th May, '66; 19 May, '66; 31 May, '66; 11 June, '66, and 25 June, '66.

By this steamer I received your letter of the 10 July containing a note of a friendly character, which I notice elsewhere.

As the letters of former steamer call for no especial notice or attention here, I shall confine myself to your last, and also endeavor to give you precise information respecting the condition of the work.

I here thank you for the expressions of confidence and satisfaction contained in your letter in reply to mine. I can only say that however open to criticism my administration may be, my only object has been, and will be, to carry out as speedily as possible your wishes and instructions.

The wheel, battery, and mill-house are completed; the and roof being finished, the machinery in its place and arranged, save the boiler for heating the patio; this was improperly sent from San Francisco in small pieces, when much of this work should have been done in the foundry there. The object of my being here is to secure a competent person to rivet together the boiler, and though it might possibly be done successfully with the labor we have, yet I have deemed it preferable to leave nothing to chance, and I think I have the man I want.

On Boardner's defection I engaged the services of Seth Rice, former machinist and and was congratulating myself and the company with the happy exchange, when unfortunately at the end of the month he determined to leave, much to my regret. During his stay, however, the work went on and I consider it fortunate that things took the course they did, bringing on the work in hand of which former, Boardner, was at least wanting.

The one drawback is in the ditch; though I fear that, if it could be rendered available under Mr. Castillo's control, no insuperable difficulty exists now.

The old stone-work of the ditch I have carefully repaired, and floored where it was wanting, and will, I trust, soon have it in a condition to put the water on the wheel.

Of this last I had grave doubts before the rainy season. Time demonstrated that they were not well-founded. I feared the wheel was too low and would be seriously interfered with by the back-water, but up to the time of my leaving the greatest height it had reached (the river) did not raise the water sufficiently to cause any apprehension.

Therefore, I think that while detention may happen from floods or excessive high stage of water, that it will but rarely happen, and that the progress of the work will not be seriously interfered with.

The hacienda is gradually assuming a neat and orderly appearance. The store and rooms in new building are furnished and occupied, the end of the two ranges of buildings being connected by cross-wall of stone, strong and safe.

The foreign (white) force I have reduced to the minimum, thinking it to be a most futile source of expense, with none of the corresponding advantage.

The ore on hand has been overstated, unintentionally, a fact which I found out on making an examination of the books.

I have had the large pile of 2nd-class ore, about which much doubt had arisen, cleaned, and the amount of clean from the rock, as declared to be the expert Limpiador, is very small.

The ore cleaned from it, however, is very good, and the other pile of 1st-class

metal is not only better in quality, but in as far as has yet been made manifest but little waste metal.

Besides these there is a third pile of almost equal amount to either of the others from the El Cristo.

I remark what you ask respecting inventory and statement. It has been made, or partially so, and will be forwarded with full and explicit statement by next steamer.

It is but just to myself to say that your letters by last steamer did not reach me till near the close of the month, and as sickness and death had done their work in our little circle, it was out of my power to comply with your wishes, my time being entirely taxed to work in the store.

Thanking you for your encouraging words, I would say that the first experience was the most bitter. I am more comfortable and contented now, and am provided with assistance, which I always find ready and willing.

The death referred to above was that of my clerk, a young Mexican, speaking English, a most worthy, honest, and faithful gentleman.

I trust to replace him with a young gentleman of good standing and character, at $40 per month. Therefore you need not send any one from the States, as the book-keeper and clerk are enough, and salaries are loophole.

I am as anxious as yourself to meet with results, from different motives, but I trust no less operative. I am in hopes of gaining ground, instead of falling away, despite the many drawbacks and trials I have had to stand.

Mr. Cullins, of whom you speak, former head miner, with Dr. Hardy, left by July steamer. I presume you have seen them by this time.

Though regretting his departure at the time, I do not feel his loss, having an equally competent, reliable, and steady man to fill his place.

Up to August I had been working in La Luz and El Cristo mines, the others being under prorogue till January next. The results from La Luz not corresponding with the outlay, I reduced the force there, working in one place where the metal justified, and also a cross-cut to strike the true vein, which has been left to the right. This took place under Cullins, and, conscious of the fact, he commenced the work I am now driving, but ceased upon the sale and transfer to you.

Since then it has been resumed, and the metal in the left-hand branch becoming scarce and less rich, I determined to drive across to cut the vein in the main level, being able to trace it. It is an old working, both above and below the level on which the work is now being done. The distance to go is only a matter of a few yards. As the Christo was dangerous to work for a while, in consequence of the presence of carbonic acid gas in the mine, I ceased operations there temporarily (now resumed), and have also put gangs (small ones) into the Jalpa and Arsallas, said to be among the richest of the mines. Yesterday, in talking with old Mr. V. Larsaga, of this place, who is personally and practically acquainted with the mines, I asked his opinion respecting the best course to pursue, and was gratified at his approval of what I had done.

When I arrived in Tayoltita, the payments were made mostly in cash. After the first month I reduced it to one-half and the next to one-third cash, and rest in goods.

The supply of goods and necessaries is ample for some time to come, but the bills are not all yet paid, and I am compelled to draw on you, despite the inconvenience I may cause you.

By this steamer I draw on you for ($10,000) ten thousand dollars. On this I receive premium, of course; heretofore 2 per cent., and is worth now 3 per cent.

On the former drafts I received from Bank of California ¼ and per cent., respectively.

The certificate you ask for I inclose herewith. It was my first impulse to return them to you, but upon again reading your letter, I determined to obey orders. With this you will have perceived by the letter in which I inform you they were returned, but changing my mind, contradict the statement on the envelope.

As to the interest you hold in the Nuestra Sra. de Guadalupe Co. and the attendant assessments, I can only say that they still continue, four having been already paid, one by Gen'l B., one by yourself, and two by me, and a fifth now demanded, payable on 16th of this month, or before, or forfeiture and sale.

This law I do not think is sound, though recognized in (San Francisco) California, but Mexico has laws of her own, and there the same principle is maintained, yet the four months' notice is required, and the application and communication must be through the judge. So I gather from Rockwell's translation of the mining laws of this country.

Not feeling to pay out more to this comp'y without your authority, I have written satisfactory letters to the pres't and sec'y, telling them that arrangements would be made upon arrival of steamer or telegram for payment in San Francisco, and asking what steps are to be taken. I scarce know whether to attempt to advise or no, but you know the property as well or better than I.

No work is going on other than the development of the mining property, but I understand that immediately upon the end of the rainy season the hacienda contemplated

will be begun. The desire and intent is evidently to and beneficiate at your new works, and impatience is exhibited by that co. to know when and for how much it will be done. I came down by way of Guaricsamé and Ventana on the mountains, saw Mr. Arriza, and asked for the history of the Promontorio, so long promised by him and so long desired. He assured me I should have it upon my return; so, upon the strength of his word, I inform you that it will be forthcoming. As to the existence of the Guadalupe store in it is beyond my power of control; it would never, or for a long time, been established, had our hacienda continued to supply the wants of their miners; but a difference arising between the gentlemen respectively controlling the interests of their companies here, the call upon us ceased, and a store, as was then necessary and inevitable, was determined upon. Such, at least, is what I learn.

To control it now is out of my power, I fear, tho' means of convenience and interest after awhile may be formed to correct this. It is, however, a small affair, as compared with ours.

Please present my regards always to Mr. Hearn when you write, and accept for yourself my thanks and best wishes.

Yours, respectfully,

J. A. De Lagnel.

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46 Mazatlan, Mexico, 16*th August*, 1866.

Dear Sir: I avail myself of the first opportunity offered to notice your letter of 3 June, inclosing notification of a further assessment of one dollar per share upon the stock of the Nuestra Señora de Guadalupe S. M. Co., held by the company that I have the honor to represent.

The paper was not delivered to me until after the 20th of July (I think), as in consequence of the high water and heavy rains prevailing at this season it became necessary to send our letters down by a courier. It was therefore impossible to reply by the return steamer of last month, as I would have wished.

The payment will be made in San Francisco, and to this end Mr. Garth, the treasurer of the La Abra S. M. Co., will be advised at once upon arrival of the steamer in San Francisco.

I leave the payment to him, in San Francisco, as you suggest, and thus advise you that no premature action may be taken in regard to the sale of the stock, as whatever of delay there has been has arisen from natural causes, out of my power of control. All previous dues or indebtedness have been fully paid by me, through the house of Echeguren & Co., of this place, of which fact I presume your superintendent has fully advised you.

With respects,

J. A. De Lagnel,
Sup't La Abra S. M. Co.

—— Pfeiffer,
Nra Sra de Guadalupe S. M. Co., San Francisco, Cal.

Mazatlan, Mexico, 16*th August*, 1866.

Gentlemen: I inclose herewith the landing certificate asked for in your letter of 31st ulto., and am happy that I am able to do so by this steamer.

The goods, you will recollect, were purchased before my arrival here, by Gen'l Bartholow, and I was not aware that anything had been neglected, else should have sooner attended to it.

I believe there is a small balance due to your house for some purchases on Gen'l B.'s account, but I am not familiar with the details. Please advise me at your earliest convenience, and believe me,

Yours, respectfully,

J. A. De Lagnel.

Messrs. Weil & Co.,
San Francisco, Cal.
(Across the face:) Not sent.

Mazatlan, Mexico, *August* 16, 1866.

Sir: I write you by this mail because Mr. Pfeiffer, in his letter covering notice of assessment, says, "Our pres'd't, Mr. Stoud, asks me to remark to you that he is expecting a letter from you in regard to the crushing of some of the ore of this company."

As remarked to you when in San Francisco, it would be of mutual advantage to crush your ores, provided we had not enough of our own to work to advantage, but

that in the then incomplete condition of the mill it was out of the question to commit myself by promise or engagement to work it in any given quantity or at a stated price.

To my regret the mill is not yet complete, tho' well advanced, and I trust shortly to be able to answer you as you desire, but at the present moment it is not in my power to do so.

I regret that you were so mistaken in your views as to the necessity for further assessments. It has surprised me no less than it has been cause of regret that the necessity for so constant and heavy assessments should exist.

Trusting that the arrangement with New York for payments direct will be satisfactory,

I remain, your ob'd't serv't,

J. A. De Lagnel,
Sup'd't La Abra S. M. Co.

—— Stoud,
Pres't N. S. de Guad'pe M. Co., San Francisco, Cal.

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47 Mazatlan, Mexico, 16*th August*, 1866.

Dear Taylor: Pardon me for troubling you with my affairs, but feeling sure you would do me the favor with willingness, I have not hesitated to ask it at your hands.

You will greatly oblige me by sending the following telegram to David J. Garth, No. 18 New street, New York:

"Fifth (5th) assessment one dollar per share, on Guadalupe stock, payable immediately. If desired please pay by transfer."

J. A. De Lagnel.

Mazatlan, Mexico, 16 *August*, 1866.

Dear Sir: I avail myself of this opportunity to advise you of the receipt of your two letters, one by this, and the other by former steamer, informing me of the receipt of my draft and letters, of your action, and the amount of premium to my credit in your hands.

I herewith inclose a draft (first and second) for ten thousand dollars on D. J. Garth, of New York.

Please place to my further credit such amount of premium on said draft as prevailing rates of exchange allow, and advise me at your convenience.

Against the above-mentioned draft on New York I have drawn upon your bank for the like amount (ten thousand dollars), in favor of Messrs. Echenigue, Peña & Co., of this city.

I am, sir, very respectfully,

J. A. De Lagnel,
Sup'd't La Abra S. M. Co.

Wm. C. Rallston, Esq.,
Cashier Bank of California, San Francisco, Cal.

Hacienda de La Abra, *de Agosto de* 1866.

Sor. Juez 1° *Major de la* 1ª *Instancia San Dimas:*

Tengo el honor de acusar recibo de la cita que me envió V. citandome para el dia de hoi á ese juzgado, por una demanda del Sõr. D. J. Ma. Loaza y en contestacion digo, que me sera imposible hacer tal viaje por ahora, hallandome bastante enfermo de calenturas, que me ha tenido prostrado hace algunas dias.

Soy de Vd. aso. S. S.

J. A. De Lagnel.

[Translation.]

Hacienda of La Abra, *August* 25*th*, 1866.

To the judge of the 1*st instance of San Dimas:*

I have the honor to acknowledge the receipt of the summons that you issued for my appearance to-day at this court, in the matter of a suit brought by Mr. J. M. Loaiza. In answer allow me to say that it will be impossible for me to make that trip at present, on account of my being sick with the ague, which has kept me in bed for some days.

I am, sir, your affectionate and sincere servant,

J. A. De Lagnel.

HACIENDA DE LA ABRA,
Tayoltita, Agosto 31, 1866.

Sñr. D. JESUS M. CURROLA,
Hacienda del Pilar Gavilanes:

ESTIMADO SEÑOR MIO: Su grata del 24 del p. p. llego á mis manos, adjunto con una proroga las minas de esta compañia y á la vez otra para Promontorio y Accepta Vd. Señor Mio las gracias para las molestias y atencion en el cumplimiento de mis repitidos encargos y espero que con la misma franqueza tratará conmigo en todo tiempo en que le puedo servir.

Espero luego la cuenta de gastos qe estoy.

Sin mas por ahora, me quedaré á sus ordenes de Vd. su afmo. S. S., Q. B. S. M.

CARLOS E. NORTON,
por ausencia del admor.

48 [Translation.]

HACIENDA OF LA ABRA,
Tayoltita, August 31*st*, 1866.

Mr. JESUS M. CURROLA, *Hacienda del Pilar, Gavilanes:*

MY DEAR SIR: Your favor of the 24th ultimo reached me as also an extension the mines of this company and at the same time another for Promontory and

Accept, sir, my thanks for the troubles and attention you have had in the fulfillment of my repeated requests, and I hope that you will treat me with the same frankness any time that I may be useful to you.

I expect soon the ac't of expenses which I owe.

Without any more for the present, I remain your affectionate and sincere servant,

CARLOS E. NORTON,
In the absence of the Superintendent.

HACIENDA DE LA ABRA, *Sept'r* 2, 1866.

J. G. RICE, Esq're,
Hacda del Balhuaste, San Dimas:

DEAR SIR: Col. De Lagnel has just arrived, having been detained on the road from Mazatlan several days on acc't of swollen streams and other difficulties which this season causes.

He sends by a "proprio" a package of mail matter, and requests me to say that owing to the many expenses of the trip he expects you to bear your share of them, as he did with you last mail.

The col. is well and sends regards.

Yours, most respectfully,

CHAS. E. NORTON,
By order of the Supt.

Amount of indebtedness contracted by G'l Bartholow and remaining unpaid, 1866.

To whom due.	On what account.	Amount.	Paid by me.
Angel Castillo	Bills for powder, tallow, flour, etc.	$6,058.26	$6,058.26
Echeguren, Quintana & Co	" " dry goods	1,663. "	" "
Do. do.	For money overdrawn	2,312.60	2,312.60
Echenique, Peña & Co	" groceries	2,824.82	2,824.82
Geo. F. Griffiths	" money loaned	1,291.36	310. "
Juan Cazares	" powder, bill of Ap'l, 5 mo's	1,000. "	" "
Guadalupe S. M. Co	" assessment and money loaned	895.58	895.58
Th. J. Bartholow	" money loaned	859.65	741.80
David Castro	" corn, bill of April	755.62	755.62
J. V. Hardy	" money advanced	755.46	350.75
George Cullins	" services and money borrowed	719.20	719.20
W. A. Boardner	" " as millwright	633.32	633.32
Carreaga & Co	" bill of dry goods	665.42	665.42
Lansing Haight	" build'g new store (contract)	518.60	518.60
Henry Lowell	" services as mason	474.40	474.40
Weaver, Wooster & Co	" bill of flour, Ap'l	375. "	375. "
H. R.	" services as carpenter	345.52	345.52*
James Colins	" " as laborer	327.86	327.86*
Edw'd Parker	" bill of fuse, Ap'l	290. "	290. "
James Grier	" services as blacksmith	285.44	285.44*
Hueta	" bill of corn, Ap'l	250. "	250. "
Wm. Witte	" services as carpenter	231.04	231.04
Appleby	" " as mason	221.84	221.84
Dan'l Sullivan	" " as laborer	209.71	209.7*
P. Termittigér	" " as carpenter	206.76	206.7*
Carried to foot of next page		24,170.46	20,060.2*

*Figures cut off in original.

HACIENDA DE LA ABRA,
7 September, 1866.

DEAR SIR: Upon examination, finding the bill you presented correct, I have written to Messrs. Echenique, Peña & Co., requesting them to pay you the sum of one hundred and seventy-six dollars and eighty-nine cents.

49 You will oblige me by making out a formal bill, receipted, as I will need it to file for reference. They will send it to me.

With best respects, I remain,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

Dr. B. R. CARMAN, *Mazatlan.*

HACIENDA DE LA ABRA,
7 September, 1866.

GENTLEMEN: I send by the mozo Nicolas Aquilar my letters, which you will please forward by Wells & Fargo's Express. The mail matter for the h'd'a please wrap carefully up, and send by the bearer of this, with a note stating the postage charge on each, as before.

You will oblige me by paying to Dr. R. B. Carman, U. S. consul ($176.89) one hundred and seventy-six dollars and eighty-nine cents. Be particular to receive the bill and receipt and forward it with the letters to me.

To J. V. de Lareaga please pay the sum of one thousand three hundred and twenty-eight dollars and ninety-three cents.

I think I gave my acceptance for this bill; please remember this, and secure the paper, and send the receipt for the amount to me.

Your own bill please pay, recollecting the deduction promised on account of oil and vinegar lost, one-half, I understood you to agree upon.

I have drawn on you in favor of Tomas Huesta for two hundred dollars ($200), and C. E. Norton for one hundred dollars.

With respect,

J. A. DE LAGNEL,
Sup't de La Abra S. M. Co.

Messrs. ECHENIQUE, PEÑA & CO.,
Mazatlan.

TAYOLTITA, MEXICO, *7th September*, 1866.

D. J. GARTH, Esq're,
Treasurer La Abra S. M. Co.:

DEAR SIR: As promised, I send you full and complete statements of the liabilities left unsettled by Gen'l Bartholow, and of the moneys received and expended by me, and of the property found at this place at the time of my arrival.

I have already informed you that the gen'l would not consent to make the inventory of property asked for by me, and it was not done until some weeks after I took possession, I being absent, and having no one to do it before a proper assistant arrived.

It was, however, carefully compiled, and allowance made for the sales between 1st May and the day on which taken.

The tools I received myself. You may accept these papers in full confidence, all possible care having been bestowed upon them. The account current requires some explanation to reconcile what would otherwise convey an erroneous and injurious impression.

You will observe that the sales (cash) for the months of May and June are large, while afterwards they fall away to a few hundreds per month. The explanation lies in the fact that *all* sales here under the old system consisted in cash sales, though for the most part the merchandise was paid directly over for the indebtedness incurred towards the miners and other workmen.

The result of this course was to swell the apparent receipts and disbursements of cash. Now only the amount actually paid in coin is considered as cash, and merchandise is called by its own name, while the same rule is observed in the matter of receipts.

As to your remark in reference to borrowing a few thousand upon the strength of good credit in Mazatlan, let me assure you that nothing can be done in that quarter. But little confidence is felt in American mining companies, and the present condition of affairs enhances the doubt entertained.

Your company is about the last actively at work, the others having suspended for cause, and waiting for something to turn up.

I have asked, and know nothing can be had. In respect to the amounts paid to Messrs. Griffiths, Hardy, and Bartholow by me just before their departure from Mazatlan, you will find that the report then made to you differs some few dollars from the amounts respectively charged in the accompanying list.

This difference occurs because there were small amounts drawn, as shown by the books, prior to the final payment in Mazatlan, and of which I was not advised.

The explanation is made to avoid misconception. I would call your attention to the account of the Ilia Señora de Guadalupe Co. At the time of General Bartholow's surrender of the there was reported by him an outstanding indebtedness to that co. of $345.58; whereas an examination shows that a credit of the amount of one assessment ($550) had been omitted from the account.

The amount of money paid by me to them appears large and unreasonable, but nearly seven hundred dollars are borrowed money, to be returned to the sup'td't, who has loaned it to our company (to Gen'l B.).

I have paid two assessments since my arrival, amounting to eight hundred dollars, in addition to which I have paid the small balance due. Subsequently I have received notice of another for $550, payable in S. F. 31st July, and forfeited if not paid. Sale to take place 1st August. Not feeling at liberty to pay further assessments, in view of present state of affairs and your letters to me, I wrote to Col. John McLean Taylor, U. S. commissary of in San Francisco, a telegram to you, advising that you would pay by transfer if you deemed proper. I also wrote to the officers of the company in S. F.

The history of the Promontono mine I send herewith, this having only arrived a few days since.

This, as all other mines we hold, is secured by prorogues newly obtained.

I am happy to inform you that the mill is fast assuming shape and giving promise of early usefulness.

The ditch we are getting along with very well, and the wall, a solid stone one, being well under way, and the old portion thoroughly repaired,

The place has a new appearance, although there are many improvements I would like to make in time, after the work becomes self-sustaining.

The fall to the ditch is greatly less than I had been led to believe in the absence of instruments, a recent partial survey giving me data for this opinion. It will, however, be found sufficient, I think.

The difficulties to contend with at this season in doing outdoor work, and especially masonry, are many and great; but the work is going on, not having been suspended tho' delayed. In reference to the mines, I have to inform you that we are working in the La Luz, El Cristo, and the Arrallon with the same force as before. The first of these mines has not so far answered expectations, it yielding but comparatively little paying ore, requiring great labor and expense to get it out. The better vein in the Cancero or Crosscut was reached in my absence and promises well. The Cristo so far gives better promise than the others, the metal abundant and good, showing largely and well in the vein, and lowest tunnel now being driven to connect with a shaft for draining and clearing the mine.

The work on the Arrallon is too recent to expect much return as yet, tho' the miner in charge expresses the most lively expectations. He knows the mine and takes great interest and pride in the prosecution of the work, and it having been attempted partly because of this knowledge of its worth and capacity.

As yet the yield of ore from the mines does not fill the measure of our needs for the mills, but I reduced the working force (it being costly) in June, for the sake of keeping down expenses until the mill-work should be complete or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless.

I note your remarks about working rock less rich than that treated by Castillo. In reply I would inform you that everything that is believed to contain enough to pay for packing down and beneficiating is saved. I believe I have gone over the ground, and given you a glance at the state of affairs in a general way.

With many thanks for your kind letter, I am, yours, with respect,

J. A. De Lagnel.

Hacienda de La Abra,
8 *de Setiembre de* 1866.

Sor. D. Andres Cazases, *Gavilanes:*

Estimado Señor: Esta tiene por objeto solamente informarle, que la cuenta que le debo de mil pesos, valor de la polvora que le compre, esta ya para vencer el plaza, yestoi pronto pagarsela cuando guste mandame Vd. quien la reciba, con el documento correspondiente, por su pu esto entendido que el pago se verificará por una l. sobre

Durango, á la ordn. del Sor. D. Jesus M. Gurrola, segun las instrucciones de V por su carta del 8 de Mayo pº pdº.

Soi de V. Sor mio como spre., S., atº S., etc.

J. A. De Lagnel,
Administrador.

51 P. D. Adjunto va unas cuales para Durango, los cuales se sirve V. enviar por la via mas oportuno.

J. A. De L.

From Echeguren, Q. & Co.

[Translation.]

Hacienda of La Abra, *Sept. 8th*, 1866.

Mr. Andrew Casares, *Garilanes:*

Dear Sir: My object in writing this is simply to inform you that the bill I owe you for a thousand dollars, value of the gunpowder I bought of you, is about to expire, and that I am ready to pay it to you whenever you please. Send somebody with the necessary document to receive it, with the understanding that the payment is to be made by means of a draft on Durango, to the order of Mr. Jesus M. Gurrola, according to the instructions contained in your letter of the 8th of last May.

I am, sir, your attentive and sincere servant.

(Signed) J. A. De Lagnel, *Supt.*

P. S.—I enclose you some letters for Durango, which you will please send the best way you can.

J. A. De L.

From Echeguren, Q. & Co.

Hacienda de La Abra,
8 *de Septiembre*, 1866.

Sor. D. Angel Castillo del Valle, *Durango:*

Sor. Mio: Con fecha de 6 de Julio pº pdº deposite en la casa de los Sres. Echeguren Quintana & Cia. de Mazatlan, la suma de dos mil cuaranta y ocho $\frac{10}{100}$ pesos siendo esta el saldo debido á V. en aquella fecha.

Ahora, el 21 del pasado hize un deposito, en la misma casa, de la suma de dos mil doscientos diez y siete $\frac{17}{100}$ pesos, valor de su factura de 26 de Abril del presente año, con plazo de cuatro meses asi con estos payos cerrando nuestra cta.

Habiendo arreglado con la casa de Echenique, Peña & Cia. de Mazatlan, para poder girar á la casa de V. si fuese necesario, por la suma de dos mil pesos y he girado á favor del Sor. de Jesus M. Gurrolla, en la suma de nueve cientos cincuenta y tres $\frac{30}{100}$ pesos, y á mas el mismo le presenteriá un L á mi favor girado por D. Miguel Lareaga, por ciento cuaranta y seis $\frac{80}{100}$ pesos.

Sirvase V. avisarme del recibo de esta y de la acceptacion de mis L.

Soi de V. Sor. mio como spre. S. ado. S., etc.,

J. A. De Lagnel,
Administrator.

[Translation.]

Hacienda of La Abra,
Sept. 8th, 1866.

Mr. Angel Castillo del Valle, *Durango:*

Sir: I deposited on the 6th of July last, at the house of Messrs. Echeguren, Quintana & Co., of Mazatlan, the sum of two thousand forty-eight $\frac{37}{100}$ dollars, that being the balance we owed you on that date.

We made on the 21st ultimo another deposit, at the same house, of the sum of two thousand two hundred and seventeen $\frac{17}{100}$ dollars, amount of your invoice of the 26th of April, of the present year, payable at 4 months' time, settling up our account with these payments.

Having arranged with the house of Echenique, Peña & Co., of Mazatlan, the way of drawing on you, if necessary, for the sum of two thousand dollars, I have drawn a check to the order of Mr. Jesus M. Gurrola, for nine hundred and fifty-three $\frac{30}{100}$ dollars, and he will, besides, present you our check, to our order, drawn by Mr. Miguel Lareaga, for one hundred and forty-six $\frac{80}{100}$ dollars.

Be pleased to advise me of the receipt of this and of the acceptance of our checks.

I am, sir, your affectionate and sincere servant,

(Signed) J. A. De Lagnel,
Superintendent.

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HACIENDA DE LA ABRA,
8th *September*, 1866.

J. G. RICE, Esq're,
Supdt. Durango, S. M.:

DEAR SIR: As Col. Norton will visit San Dimas to-morrow, I have requested him to present to you the accompanying bill, and have authorized him to receive and receipt for the amount.

I also send a bill against Mr. Grassie, which you will please present to him for me, or settle it if acceptable to all concerned. Col. Norton is empowered to receive this also.

You will pardon me, I trust, for the seeming importunity, but having brought no money from the coast since June last, I am very much in need of the money to meet my current payments, and am compelled to ask for an immediate settlement.

With kind regards for yourself, I remain yours, with respect,

J. A. DE LAGNEL, *Supt.*

The Durango Silver Mining Co. to the La Abra Silver Mining Co., Dr.

May, '66.	For balance due as per G'l Bartholow's books		$110.09
June 16.	" cash from J. A. de Lagnel		600.00
July, '66.	" 2 bottles mustard		2.00
Aug., '66.	" expense of courier to Mazatlan		20.00
			732.09
	CONTRA.		
May, '66.	By cash from Mr. Rice	$61.89	
May, '66.	" cash from Mr. Grassie	48.	
	" 2 trowels	3.50	
	" 1 arroba of wicking	25.00	
	" 25 cargas corn, at $15	375.00	
	" sundries (nails and brooms)	6.50	
	" payments to Correo	1.00	
	" share of expenses of Correo to Mazatlan	20.00	
	" cash	100.00	
			640.89
			91.20

George Grassie to La Abra Silver Mining Co., Dr.

March.	For merchandise (sundries)		$20.00
"	" do. do.		14.13
			34 13

TAYOLTITA, 29 *September*, 1866.

DEAR SIR: I enclose herewith a receipt for the money last sent. On the 24 I received from Guadalupe Soto thirty dollars on your account, for which a receipt in Spanish was given. Both amounts are to your credit, closing your account.

Accept my thanks for your promptitude, as it came just in season.

The private note is destroyed, and while thanking you for the information, need only say that the report you heard is wholly groundless. I look into things and satisfy myself.

Yours, with kind regards,

J. A. DE LAGNEL.

J. G. RICE,
Supdt. Durango S. M. Co.

HACIENDA DE LA ABRA,
Octubre 5 *de* 1866.

Señor D. ANGEL CAZARES, *Gavilanes:*

MUY SOR. MIO: Hoy se me ha presen tado el arriero Marcelino Flores con una carta de Vd. f ha. 10 de Junio del corriente año y asi mismo me ha entregado el recibo expedido en la misma fecha, por treinta cargas. Una funega y nueve almudes de main cobrando el dinero de su importe.

53 Como por su grata 5 de Junio V. me da orden de pagar al mencionado arriero el maiz recibido á $9 carga, hoy lo hayo quedando á su disdosicion de V. el valor

de las cargas que me entrego á Ud lo que le pagaré personalmente ó á su órden. El pago hecho fue de $277.87 quedando en mi poder veintitres pesos quince centavos.

Sin mas por ahora quedo de Vd. afmo. y S. S.

J. A. DE LAGNEL,
Administrador.

[Translation.]

HACIENDA OF LA ABRA, *October 5th*, 1866.

Mr. ANDREW CAZARES, *Gavilanes:*

SIR: The muleteer Marcelino Flores has handed me to-day your letter of the 10th of June of the present year, and has also delivered to me your receipts of the same date for the thirty cargas, one bushel and nine *almudes* (one almud is the 24th part of a bushel) of corn, and asked me for the value thereof.

As by your favor of June the 5th you order me to pay the said muleteer for the corn that has been received at the rate of $9 per carga, I have done so to-day, leaving at your order the value of the cargas which he delivered to me at the rate of six reals (75c.), which I will pay to you personally or to your order. The payment made amounted to $277.87; remaining in my hands twenty-three dollars and fifteen cents.

I remain your affectionate and sincere servant,

J. A. DE LAGNEL,
Superintendent.

HACIENDA DE LA ABRA, *Octubre 5 de* 1866.

Sor. D. ANGEL CASTILLO DEL VALLE, *Durango:*

MUY SOR. MIO: Con esta fha. he librado á su contra, la cantidad de doscientos setenta y siete pesos ochenta y siete centavos, y á favor de Marcelino Flores, valor recibido en maiz, por cuenta de D. Andres Cázares, de Gavilanes.

Espero de la bondad de Vd. se sirvara pagarla á la vista y cagarla á mi contra como lo tengo arreglado con la casa de Echenique, Péna y Ca. del comercio de Mazatlan.

Sin otro asunto quedo de Vd. como siempre afmo. y S. S.

J. A. DE LAGNEL,
Administrador.

[Translation.]

HACIENDA OF LA ABRA, *October* 5, 1866.

Mr. ANGEL CASTILLO DEL VALLE, *Durango:*

SIR: I have to-day drawn against you for the sum of two hundred and seventy-seven dollars and eighty-seven cents in favor of Marcelino Flores, for value received in corn and on account of Mr. Andrew Cazares, of Gavilanes.

I hope that you will be kind enough to pay it at sight, and to charge it in our account, according to the arrangement made with the house of Echenique, Peña & Co., merchants of Mazatlan.

I remain your affectionate and sincere servant,

J. A. DE LAGNEL,
Superintendent.

HACIENDA DE LA ABRA, 8 *October*, 1866.

Colonel C. E. NORTON:

DEAR SIR: Not returning by the 30th of last month as you had intended, I am at a loss to know whether sickness or accident has detained you, therefore write to know from yourself the true state of the case.

Your absence since the 30th Sept. has embarrassed me somewhat, as I desired to go down to Mazatlan, but cannot until you return or I can make some other arrangement.

I cannot believe that you do not intend to return, but should such be the case please inform me promptly, and it is but justice that I should be advised at once of your movements.

It is of the first importance that I should be enabled to go either to Mazatlan or to Durango, as my money here is exhausted and the people consequently dissatisfied and the work necessarily retarded.

If you intend to return, therefore I urge upon you immediate action, but if you do not, please be good enough to inform me.

Yours, with respect,

J. A. DE LAGNEL, *Supdt.*

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HACIENDA DE LA ABRA,
Tayoltita, 8 October, 1866.

DAVID I. GARTH, Esq're,
Treasurer La Abra S. M. Co.:

DEAR SIR: The non-reception of my letters written last month has no doubt caused you some surprise and uneasiness, but causes beyond control operated to prevent the mail matter, sent down by couriers, from reaching the port.

The mozo going with the letters from this place to La Puerta was bitten by a rattlesnake and died at a cabin on the mountain, where there was no person capable of bringing me intelligence or of aiding him. About a week subsequently I learned the fact, and by sending recovered the letters, etc.

The papers I now send, hoping they will reach you speedily and safely, but fearing that causes no less formidable will again interfere.

Had the boy gone down he could not have entered Mazatlan, the military operations going forward preventing all communication with the city.

We are without news, and wholly in the dark, having heard nothing for a month past.

The work is progressing, the flume is completed, and we to-day, for the first time, let water on to the wheel, in order to dress the face of some pulleys, but the ditch being incomplete, the supply of water (drawn from the arroyo) was wholly inadequate; the boiler is completed and in position, and the ditch is pretty well advanced; it is, however, a heavy piece of work, being about 2,000 feet in length that is to be walled, and much of that passes over ground filled with huge bowlders that must be blasted away before the walls can be laid or the grade given.

From the river we shall have an ample supply of water, I think, though some work must be done on the dam and upper part of the ditch to make it properly available.

The La Luz mine proving unremunerative, and the small yield of ore being wholly rebellious, I transferred the force to the Cristo, in which the metal has increased in quantity and quality. It shows gold largely, and promises well, the mine being not so well opened as the other, being newer, requires attention now, as it is, or appears to be, the mine that will be looked to to supply the mills in great part.

I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust.

The Guaripamey property I have secured until next January by prorogue, but I doubt whether I will be able to cover it after that date, as I suspect certain parties of being on the watch to denounce it, desiring to work it; therefore they will operate to prevent the grant to me of further indulgence.

The Guadalupe (or rather the Concordia is where they are working) mine is doing poorly, the tunnel handsomely driven and work well done, but no metal. A small quantity at the mine is all the result obtained, and I am led to believe that they will suspend operations.

In this supposition I may be wrong; have no authority for the belief, but give it as I do the other information, to put you on your guard.

About the mill but little remains to be done, and were it not for the ditch, we could speedily be at work. As it is, however, now that the walls have been so far laid, I deem it best to carry the thing to completion, and put it in thoroughly good order now, so that no after delays or suspensions may occur.

I am troubled exceedingly that better success has not attended my efforts, but the rainy season has proven a sore trial to my patience and been a serious drawback.

I have striven to meet your wishes and expectations, and regret that my success has not been commensurate with my efforts to serve you and to discharge my duties.

As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in the country longer than next 1st March.

The trials and the separation from friends, lack of association, and utter waste of life, forbid the thought of longer continuance.

I speak now because ample time should be given to send out a successor.

As to subordinate assistance, that is not required.

With kindest regards to yourself and Mr. Hearn, I remain yours, with respect,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA,
Tayoltita, Mexico, 8 *Oct.*, 1866.

Mr. T. LEMMEN MEYER,
Bankers, etc., San Francisco, Cal.:

SIR: By the July steamer, Messrs. Echenique, Peña & Co., of Mazatlan, forwarded to you at my request fifteen hundred dollars ($1,500) in coin, for John G. Edgar, together with a letter from me to him informing him of the transaction.

Your acknowledgment for the above amount has been shown to me by Messrs.

55 E., P. & Co., but as the party in question writes that he has not received the

money, I address you simply to ask that you will find him out through the post-office and set the mind of those interested at ease.

I am, very respectfully,

J. A. DE LAGNEL,
Superintendent.

P. S.—Please address me Messrs. Echenique, Peña & Co., Mazatlan.

HACIENDA DE LA ABRA,
8th October, 1866.

Messrs. ECHENIQUE, PEÑA & Co., *Mazatlan:*

GENTLEMEN: I send herewith mail matter which I beg you to dispatch as marked, carefully noting the charges for postage and express on each, so marked, and send me a memorandum of the charges, with address or name of each letter, that I may distinguish between private and public postage.

The mail matter for the hacienda please send up, carefully wrapping it, and making like memorandum of postage on each letter, naming so as to distinguish them.

Please pay to Dr. B. R. Carmen, U. S. consul ($176.89), one hundred and seventy-six dollars and eighty-nine cents. Be particular to receive the bill and receipt, and forward it with the letters to me.

To Sor. D. J. V. de Lareaga please pay the sum of one thousand three hundred and twenty-eight dollars and ninety-three cents.

I gave him my acceptance for this bill. Please remember this, and secure the paper, and send the receipt for the amount to me.

Your own bill please pay, recollecting the deduction promised on account of oil and vinegar lost; one-half I understood you to agree upon.

I have drawn on you in favor of Tomas Husota for two hundred ($200) dollars, and C. E. Norton for one hundred and forty-four ($144) dollars.

I further desire to inform you that I have drawn on Angel Castillo (already) for eleven hundred and thirty-one dollars and seven cents, and will to-morrow still further draw for some nine hundred dollars, more or less.

This I do upon the arrangements made with you when in Mazatlan, supposing, of course, that a few dollars more or less than the two thousand will make no difference either to you or to him.

I shall probably be down this month if I can possibly do so.

With best respects,

J. A. DE LAGNEL, *Sup'd't.*

MAZATLAN, 17*th Nov.*, 1866.

A. STOUD, Esq.,
Pres't N. Sonora de Guad'p'e M. Co., San Francisco:

SIR: As our mill is ready with the exception of the water, the ditch being yet incomplete, I desire to call your attention to the arrangement, which you seemed desirous of making, viz, to crush your ores and beneficiate the same.

This I feel satisfied we will be able to do, and would very much like now to be able to say for how much per ton the work could be done. Of course you will perceive that such conclusions can not be arrived at until the mill is in operation, but the time is near at hand when the information can be given.

In view of these facts, I beg to urge upon you the expediency of suspending all operations, such as building or the erection of works that would call for additional outlays and assessments. The tax is a very heavy one upon our co., and I have been surprised at the frequency with which the calls have been made, in view of the limited work being done and small expenditure, as I learn from the sup'd't.

Your opinion, or rather conclusion, as to what I think of the value of the property, is based on nothing said or written by me that I can possibly recollect.

I have been through the mines, have seen *all*, and while expressing no opinion, can only say that no one is justified in imputing to me either a high estimate of their value or otherwise.

Very respectfully,

J. A. DE LAGNEL,
Sup't La Abra S. M. Co.

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(56) MAZATLAN, 18 *Nov'r*, 1866.

Messrs. WEIL & Co.:

GENTLEMEN: Pardon me for troubling you with a matter which concerns only ourselves; but feeling assured of your readiness to oblige, I take the liberty of asking your services so far as to inquire and inform yourselves as to the value of the stock

of the Nuestra, Señora de Guadalupe S. M. Co., situated (the mines) near Tayoltita, Mexico.

We own a considerable amount of this stock, and desire to know what can be had for it in San F'co.

I would also ask if Mr. Ahem, or any one of the gentlemen of your house, would accept a power of attorney and act to represent this co. in its meetings.

It is necessary that we should be thus protected, and I again bring it to your attention, begging that you give me intelligence by the return steamer.

I am, very respectfully, y'rs,

J. A. DE LAGNEL,
Sup'd't La Abra S. M. Co.

MAZATLAN, 18 *Nov'r*, 1866.

Mr. MILLS:
President Bank of California, San Francisco:

SIR: I have to acknowledge the receipt of your letter of 31 *August* last, which reached me on the 18th of last month, but outside of this place, and too late for an earlier reply.

Mr. Exall, the gentleman who called upon you in company with Mr. Aherm, of Weil & Co., informed me that he had spoken with you on the subject of the payment of the assessment then levied, and that you stated it had been settled and paid.

Mr. Garth's recent letters to me informed me that he paid through your bank direct by telegraphic transfer.

It therefore relieves me from the necessity of drawing on N. Y. in your favor for the amount involved.

If not too much trouble, and I not asking too much, will you oblige me by ascertaining what the stock of the Nuestra Señora de Guadalupe S. M. Co. is worth in your city. (The mines are situated near Tayoltita, in Durango.) This last I mention to distinguish it, as there are several of the one name.

The president of this co. is W. Stond, a German, of your city, and the sec'y is Pfeiffer, a German druggist.

With apology for thus troubling you, I remain y'rs, &c.,

J. A. DE LAGNEL,
Supdt. La Abra S. M. Co.

MAZATLAN, 18 *Nov.*, 1866.

W. C. RALLSTON, Esq.,
Cashier Bank of California, San Francisco:

Sir: I enclose herewith duplicate drafts on D. J. Garth, of New York, for seven thousand dollars, which amount, together with ruling rate of premium, you will please place to my credit.

Against this amount I have drawn in favor of the house of Echenigue, Peña & Co., of this place, for four thousand dollars, and also in favor of Col. J. McL. Taylor, U. S. commissary, San Francisco, for twelve dollars and five cents.

You will please advise me of the receipt of these papers, and furnish me with a statement of my account.

Very respectfully,

J. A. DE LAGNEL,
Supdt. La Abra S. M. Co.

P. S.—I omitted to state that I had also drawn on you in favor of David P. Belknap for the sum of fifty dollars ($50.00).

J. A. DE LAGNEL.

MAZATLAN, 17*th Nov'r*, 1866.

D J. GARTH, Esq're,
Treasurer La Aora S. M. Co.:

DEAR SIR: I have to acknowledge the receipt of your letters of the following dates, viz, 31' July, 10th, 29th, and 31st August, 10' and 21' of September, and letter of
57 introduction, all brought from Mazatlan and delivered to me by Mr. Exall at Comacho, thirty miles from this place, about the 16' or 18' of October.

By the steamer of yesterday, I received your letter of 18' September and 10' and 18' October, the letter of 10 October being handed to me by Mr. Geo. Cullins, who arrived in the "Panama" steamer.

The letters of 21st September (one sent by mail, the other sent by express) have both reached me, though with the interval of one month.

The express letter came to hand by Mr. Exall; the other containing Gen'l B.'s statement of %, arrived by yesterday's steamer.

I am informed, however, of instances of as great or greater delay, on the part of the express co., and it is difficult to determine the point positively, tho' the presumption must be always in favor of the express.

Your instructions respecting the above account will be duly attended to by me, and information forwarded at the earliest practical moment.

Please, here, accept my thanks for your anxiety on my account and efforts to assist and relieve me.

I trust I appreciate your conduct at its true worth, and that I may be enabled to meet your wishes to the utmost soon.

I accept your high recommendations of Mr. E., and so far am much pleased with him.

I notice in your letters the expression of surprise that you do not or had not received more frequent communications from me. It is but just to myself to say that there being a mail monthly it has been my practice to write by every such opportunity. Writing more frequently would not change the intervals between departing mails, nor would it, as a general thing, bring you more information, besides it would necessitate the sending of a correo to the coast more frequently.

I was last down in August, being compelled to come, and made an ineffectual attempt in October, but the military and political situation has been such for several months that great difficulty has been experienced.

Unable to reach Mazatlan, I returned to the hacienda, and waited until this opportunity to come down.

Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation, and the proofs at last being developed. Unfortunately, I was unable in Sept. or October to communicate with this place; and the ready money giving out at the hacienda, the workmen (not miners) refused to continue and left, thus bringing the ditch-work to a standstill.

I tried in vain in the country to obtain relief, but the doubt and distrust of American co.'s is so great that I failed utterly, and am here on the same mission.

Yesterday I used every effort with the best houses, beginning with E. Q. & Co., but could effect nothing. Lareaga I did not approach, because of his Jewish nature, and the fact that he would exact guarantees I could not give, and mortgages of the property which I would be unwilling to execute.

Don Juan Castillo has not yet arrived, tho' expected by every vessel. Had he been here I should have endeavored to effect some arrangement with him, but the fates were adverse, and I could do nothing.

Enclosed herewith you will receive % current for the months of September and October; the balance of funds available at that date (31st Oct.) was $2,542.04; but it was inside of Mazatlan and could not be made available.

Consequently the work on the ditch has been at a standstill, and I am now hastening to get back to again assemble a sufficient force to push it to completion.

Since the date above referred to, accruing engagements and current expenses have absorbed the amount, and somewhat more.

In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of seven thousand dollars ($7,000).

I feel sure that you will experience no greater feeling of annoyance in receiving the intelligence than I do in communicating the fact; but after debating the thing long and carefully, I am satisfied that it is the best course to pursue. Longer delay in executing the work would be most injurious, perhaps fatal. The only obstacle to our being actively engaged with the mill lies in the unfinished condition of the ditch; this can only be remedied by the use of ready money. I have therefore asked for it from the only source to which I can look for assistance.

Do not let the delay and cost already experienced cause you or others to lose heart; but bear awhile longer and give an opportunity to make manifest the value of the metal and the mines.

In all my letters I have written with a view to avoid exciting false hopes and ideas and think it but right so to do, although I know that a more flattering tone would perhaps be more acceptable to many persons. I have done so because of several reasons: First, because it was my desire to avoid giving rise to expectations which might not be realized; and again, because I did not feel sufficiently familiar with the subject to indulge too freely in comment.

As to the circumstance mentioned in your letter, that certain parties had stated that the specimen ore had been "salted" for my especial benefit and deception, I can only refer you to the mention made of it in one of my letters, I forget which, but that it was done *purposely*, is more than I am prepared to say.

If I understand the term as used by miners, the facts are not as stated. It is,
58 however, true that, though I requested to have the 2d-class ore of the Luz mine crushed for assay, specimens were taken from the 1st-class pile and prepared for my use, but I can not say that it was designedly done.

As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial.

The mill itself may be pronounced finished, the last touches being given when I left.

That there are faults in the planning is evident, but the work had advanced too far to correct it when I took charge. The best has been done; and if the American machinery is what it is represented to be, we need have no fears. If, on the other hand, it does not fulfill all that is claimed for it, then a few faults of design or execution will make but little difference.

In getting into operation it will be my study to avoid loss or waste, and your suggestions will be duly considered. I notice in your letters the frequent use of the terms "bullion" and "bricks." Now you can not be ignorant of the fact that the exportation of bullion is totally prohibited, and coin shipped only after paying duty.

Therefore, it is self-evident that the attempt to pass it to the coast for shipment would involve a risk which no subordinate would be justified in assuming.

I will inform myself to the utmost respecting all these points, and am now doing so, but before *running any risk with the co.'s money*, I must be *positively* and *clearly instructed* in writing to do so.

Heavy losses from above causes have happened in this vicinity lately, showing that the apprehension of loss is well founded, tho' it may be that it happens but rarely.

I know full well how much more satifactory the bars would be than the coin, how far it would go as an evidence of the true worth of the mine, and how great advantage might be produced to the comp'y by having for exhibition and use; but what I have said above will meet your approval I feel sure, and call out such directions or orders as you may wish carried out.

In one of your letters you appear to think that I am or have been in California; the facts are simply these: I received late in July the notice of assessment by N. S. G. S. M. Co., payable in August. Not being able to reply by the July steamer, and unwilling to pay further assessments without orders, I wrote to the president and secretary to gain time, and at the same time requested Col. John McLean Taylor, U. S. commissary at San F., to send you my telegram, which he did, signing my name as requested.

By the October steamer I received from Mr. Mills, pres'd't B'k of Cal., a note covering your telegram to him, in which he asks me if I wish the amount paid. His letter bears date 31st Aug't, 1866. Mr. Exall, who saw and talked with Mr. M. on the 4th of October, tells me that the assessment had been paid and the matter settled, and your statement just received of the telegraphic transfer (consequent upon the receipt of the secretary's letter) leads me to understand that you have settled the call. I hear indirectly, having received no notification, that another assessment is levied. I write by this steamer to parties in San Francisco respecting the value and *possible* sale of this stock.

It is my desire to have you attend directly to this matter, as also of the assessments. Separated, as I am, so widely, and often prevented from communicating in time with San. F., the risk of forfeiture is constantly run, in addition to which I am unwilling to shoulder the responsibility of disposing of the co.'s property.

At the present time I do not think the amount of the assessment could be obtained for the stock in the S. F. market, though I do not know, but hope to shortly; therefore the choice seems to be to sacrifice what has cost $9,000 for a few hundreds, or to continue sinking money against your inclination.

At present the mine is, I may say, *bare of metal*. A few days before I left metal had been struck again, but in so small a quantity as to forbid much hope.

You can not fail to perceive, therefore, how embarrassing is the trust you desire to invest me with; and I beg that my meaning may be understood, and that you will either meet the calls direct or order the sale positively, as you may think best. I send you a copy of a letter I was permitted to read. It gives more insight into the intent of the Guadalupe Co. than anything I can say.

I now understand that the officers of that co. look directly to you in N. Y., for the assessments; please meet these or give positive instructions as to the disposal of your interest to some trusty party in San Francisco.

As I have already stated to you, all the mining property has been covered by prorogues up to January next. What will be the result of another application I can not say; but should the worst come to the worst, a force, limited, can be put to work, and this, with the interval of some months before it can be denounced, will, I trust, serve our purpose.

59 The political condition changed quickly and quietly a few days since, the French and Imperial forces retiring from this place and going down to San Blas.

Their final departure seems nigh, and the "sims" are very much elated, of course. As

yet no authorities are installed. We are dragging along in the dark, and hoping but not knowing that any advantage will be derived from the change of rulers.

One thing appears clear, that we will not have to pay duties to Imperial customs and then do the same to the Liberal officers.

Some entertain a hope and expectation that a more liberal policy, as respects the shipment of bullion, will prevail, and that, as in the case of the large houses here, paying duties, a compromise for one-half or third may be agreed upon.

I do not think so, however, and see only one of two ways, either to coin in the mint and ship the coin, or to risk the whole.

I can not close my letter without noticing what you say, in one of your letters lately received, viz, that Dr. Hardy stated that the mill was nearly completed when he left, and but little remained to be done.

It only remains for me to say that either the Dr. failed in his observation sadly or forgot what he saw.

The seasons are sufficiently well known to you to render a description of the difficulties under which we labored necessary.

Trusting that my action will meet with your approval, I remain y'rs, with respect,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, *Nov'r* 26, 1866.

MUY SEÑOR MIO: Acabo de recibir su appreciable fecha del 20 del corriente y me apresure contestarsela, para asi tranquilizarle á V. relativo á las sumas que le he girado.

Adjunta vease una carta de los Sres. Echenique, Peña & Co. del 17 de Octubre, en la cual me avisen que hayan pagado á la casa de Echeguiren, Quintana y Cia., los dos mil y pico de pesos (la suma de s'cta con esta Hacienda en aquella fecha) de que acusa V. recibo, en s. carta del 3 de Oct're p. pdo. Ademas me informen, que pagáran á s. presentacion la suma de misprimeras o. sobre V. de $1,131.07, y la de $900, á la vez, esta ultima tuvo que aumentar hasta $1,100, haciendo asi un total de $2,231.07, el cual estaba todavia en la casa citada, de E., P. y Cia á s. o. al salirme de Mazatlan hace ocho dias, no habiendose sido presentado ninguna L. de V. á la fecha.

Arregle este negocio, á mi entender, con la casa referida en el mes de Agosto p° pd°. q. suponia que ella asi entendio, y siento mucho la mala inteligencia que ha causado á V. un mal rato. Sin mas despues de avisarle de la evacuacion del puerto, por los Imperialistas, quedará á sus ordenes, como siempre.

J. A. DE LAGNEL, *Admor.*

S. S. S.,

Sor. D. ANGEL CASTILLO DE VALLE, *Durango.*

[Translation.]

HACIENDA OF LA ABRA, *November 26 de* 1866.

SIR: I have just received your favor of the 20th instant, and hasten to answer it in order to set your mind at ease as regards the sum I have drawn on you.

Enclosed please find a letter from Messrs. Echenique, Peña & Co., of the 17th ultimo, wherein they inform me of having paid to the house of Echeguren, Quintana & Co., the two thousand and odd dollars (the sum of their account with this hacienda at that date), the receipt of which you acknowledge in your letter of the 3rd ultimo.

They inform me besides that they would pay, on presentation, the sum of my first draft on you for $1,131.07, and at the same time that of $900, which latter had to be increased to $1,100, making a total of $2,231.07, which is yet at your order, at the house of E. P. & Co., when I left Mazatlan eight days ago, no check of yours having been presented up to that date.

I arranged this matter last August with the said house, according to my belief, and I supposed that they understood it so. I regret much this misunderstanding, which has caused you an unpleasant moment.

Without anything more to say but that the port has been abandoned by the Imperialists, I am, as ever at your orders, your sincere servant,

J. A. DE LAGNEL,
Superintendent.

Mr. ANGEL CASTILLO DEL VALLE, *Durango.*

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60 HACIENDA DE LA ABRA, *27th Nov'r*, 1866.

JOHN COLE, Esq., *Camacho:*

SIR: I send by the mozo Fabian Figaroa, the pack mule, with aparejo, etc., hired from you a few days since for Mr. Cullins.

The animal would have been returned two days since, but the arriero was sick and could not go down.

Please acknowledge the return of the mule, in a note, and send it back by the bearer of this.

Very respectfully,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, 30*th Nov'r*, 1866.

W. S. DURKEE, *Ventanas:*

DEAR SIR: I send by the mozo Juan Acinegas the mail matter for you delivered to me by Mr. Stockfleth when in Mazatlan.

It would have been earlier forwarded, but no one could be found until to-day to take it.

The letters from yourself, Dr. Mc. (name forgotten; but he has the opposite hacienda to yours), and from Mr. Hopgood, at Buena Vista, were delivered to Mr. Stockfleth.

On a former occasion I advanced to the carrier one dollar on your ac., and to-day do the same, in addition to which I charge you ten dollars as your proportion (with the others, which you will arrange) of the expenses of going and coming on the two occasions referred to.

Very respectfully,

J. A. DE LAGNEL.

P. S.—I have agreed with the mozo for four ($4) dollars; the balance of three dollars you will please pay him.

J. A. DE L.

HACIENDA DE LA ABRA, 8*th December*, 1866.

Mr. J. G. RICE,

Sup'd't Durango Mines, San Dimas:

SIR: I send by your messenger the powder asked for in your note of to-day; he takes but two arrobas, as he has other articles to carry over.

Below please find bill for the two lots of powder delivered.

The Durango S. M. Co. to the La Abra S. M. Co. Dr.

1866.		
16 Nov.	For 4 arrobas powder, at $10	$40
8 Dec'r.	" 2 " " " "	20
		$60

Yours, respectfully,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, 8*th Dec'r*, 1866.

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8 Dec.	" 2 " " " "	20
		$60

Yours, respectfully,

J. A. DE LAGNEL, *Sup'd't.*

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61 HACIENDA DE LA ABRA, 5*th Deciembre de* 1866.

Sor. D. J. M. GURROLA, *Alcalde Municipal, Gavilanes:*

SOR. MUY MIO: Con esta adjunto dos pedidos para la prorega de los minas Promontorio, La Abra, Animes, Rosario, Los Inocentes, San Antonio, y San Felipe, la primera del districto de Guarisamey y lrs demas de este.

Por no haber llegado el correo de Durango á San Dimas, y los remores de Indios por aquel camino, me ha evitado el poder enviarlos en su debido tiempo á Durango, adonde los iva despachar aun ignorante de la autoridad conocida en esta materia.

Le suplico á V., sor. mio, que se sirva atender á que lleguen estos documentos á manos de la autoridad que los conoce, y por la via mas opportuno; y espero que las rásones espuestos los sesian satisfactorias, como bien conocidas, y sean oidos.

Los ultimas cambios politicos me ha depado, como dicho, en ignorancia á quien dirijir mi solicitud, y por lo tanto molesto á V. como varios veces antes, suplicandole prestarse á ella, y espero saber de V. los costos incurridos, asi como cuenta debida ya, para cubrirlos.

Sin asunto mas, por ahora, sirvese V. dispensar la molestia de S. S. S.

J. A. De Lagnel, *Admor.*

P. D.—Sirvese V. dirijir los documentos, por saber el titulo de la autoridad competente. Vale.

[Translation.]

Hacienda of La Abra, *December* 5, 1866.

Mr. J. M. Gurrola, *Municipal Alcalde, Gavilanes:*

Sir: I enclose herewith two petitions for the extension of the time to work the mines Promontory, La Abra, Animas, Rosario, Los Inocentes, San Antonio, and San Felipe, located the first in the district of Guarisamey and the others in this.

As the mail from Durango has not reached San Dimas, and there are rumors that the Indians are on that road, it has not been possible for me to forward them in due time to Durango, where I was to send them, even without knowing to what authority they were to be addressed.

I request you to please to see that these documents reach, by the most timely way, the hands of the authorities to whom they pertain. I hope that the reasons stated therein may be satisfactory (as being well known), and attended to.

The last political changes have left me, as I have said, in ignorance of the authority to whom I should address my petition, and I therefore trouble you, as I have done several times before, begging you to accede to my request, hoping that you will let me know the expenses that this may entail on you, as also the account due already, so as to settle it.

Without any more for the present, be pleased to excuse the trouble of your sincere servant,

J. A. De Lagnel,
Superintendent.

P. S.—Be kind enough to address the documents, as you know who are the proper authorities.

Hacienda de La Abra, 10*th December*, 1866.

J. G. Rice, Esq., *San Dimas:*

Sir: In accordance with your note of yesterday, I send the additional four arrobas of powder asked for. Below please find bill of same.

The Durango S. M. Co. to La Abra S. M. Co., Dr.

Decr. 10. For 4 arrobas of powder, at $10..... $40

Please accept my thanks for your kind attention to my commission respecting the boots. They arrived safely.

Yours, very respectfully,

J. A. De Lagnel.

Tayoltita, 16 *December*, 1866.

Mr. J. G. Rice,
Sup'd't Durango Mines, San Dimas:

Dear Sir: Please accept my thanks for your attention to the matter of the prorogues sought by me. Herewith I send new applications, drawn in accordance with the prefect's instructions, and trust they will meet his approval.

62 Send these forward by the first opportunity to J. M. Gurrola, with the letter to Castillo (these, inclosed together, and directed to A. Castillo, Durango), accompanied by the letter to Gurrola, asking him to send from Gavilanes to Durango the package forwarded.

Our ride last night was pleasant, notwithstanding a slight mistake of ours as to the road and consequent detention.

With kind regards, yours, etc.,

J. A. De Lagnel.

HACIENDA DE LA ABRA, 15 *Dec'r*, 1866.

D. S. GARTH, Esq're,
Treasurer La Abra S. M. Co., New York:

SIR: Enclosed herewith I send two papers, one a balance sheet drawn from Gen'l B.'s ledger, the other an exhibit of receipts and expenditures during his administration.

The first column of figures in the balance sheet, of course, is taken from the ledger of Gen'l B. as he left it; the next column represents credits which should have been given, but which were omitted by Gen'l B. The column in red ink shows the outstanding liabilities on the 1st May. The footing from this last is carried to the head of the 2d page, and several accounts there added, these accounts having no place in the books of Gen'l B., tho' memoranda left with me show the contracts to be his.

I arrive at the credits to be given to the workmen up to 1st May by means of certificates left with them by Gen'l B. at my request. Supposing that, as a matter of course, you have the original of the statement submitted to me, I will endeavor succinctly to go over it, and point out its correspondence, or otherwise, with the books here.

First, as to the amount of cash received from the Co. by Gen'l B., I find that it agrees with the books, provided a necessary correction be made. In deducting the $200 (January premium from Messrs. Echeguren, Quintana & Co., which is improperly charged to me in the statement) from $102,172.00, the remainder is put down as 101,962 instead of $101,972, and again, in putting in a condensed form, to sum with the overdrafts and outstanding debts, it is put as $101,902, instead of $101,972.

As to the $200, I can only say that Gen'l B. turned over to me a check on the Bank of California for $75 and $48 in coin, in Mazatlan, received from the Durango S. M. Co.; with these two exceptions I received no money or credit from my predecessor. I hold the acs. current—sent by his bankers, Mess. Echeguran, Quintana & Co.—for the latter part of 1865 and 1866 up to 13 May. In these the proper credits for January and March premiums—$100 each—are duly given, and Gen'l B. derived the benefit of them, tho' he omitted to place it in the cash-book until May.

It will be apparent that I cannot be held responsible for what I have not received.

Failing to take up these $200 premiums in his cash-book, the overdraft amounted to $2,541.67, whereas I had to pay $2,312.60 only as the balance due for overdrafts. See note, page 2 of balance sheet.

This leaves a discrepency of $29, which I cannot explain, it not being my affair.

The dues to sundry persons overrun the amount stated in the paper submitted to me, as shown in the Dr. side of the exhibit now forwarded to you.

The payment on J. V. Hardy's stock by Wilson, and T. J. B's stock, are duly noted in their acs., and correspond.

With reference to the ac. of the Guadalupe S. M. Co., you will perceive that Gen'l B. acknowledges a balance due by his books of $345.58, whereas the true balance in their favor was $895.58, arising thus: At the time of my arrival here three assessments had been levied; the first was paid by Gen'l B., and the Guadalupe Co. debited for the amount, $550, but no corresponding credit for the assessment was given.

The second assessment was paid by you, by telegraphic transfer, in the winter; no mention of that, as a matter of course, is made here, but there was a third assessment due when I arrived here, and credit was given for it *only*.

The credit omitted for the former or first assessment had therefore to be allowed by me, as the credit allowed that company was mostly for money borrowed from the sup'd't, and it was in reality thro' mistake, offsetting the borrowed money by the payment of an assessment.

It will be observed that the individual accounts differ in some respects from Gen'l B.'s statement; this arises from the fact that the statement is drawn from the *ledger up to the 30th April*, tho' Gen'l B. continued to hold the books, for settlement and balance, up to the date of his leaving, delivering them to me in Mazatlan.

During this period he made many entries which he had forgotten to take up or consider, tho' a careful examination shows me that they were his own transactions, entered a little after date.

I trust that the papers forwarded will meet your approval.

I remain, sir, yours, with respect,

J. A. DE LAGNEL, *Sup'd't.*

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63 MAZATLAN, *December 31st*, 1866.

Mr. G. F. NOLTE, *Consul:*

SIR Your note of the 15th Dec'r was handed to me a few days since, at San Ygnacio, as I passed that point on my way to this place.

I regret not having seen you, as it would have been more satisfactory to have talked over the matter of your employment, etc.

At present I am not prepared to employ you, but think it more than probable that the services of some one having your knowledge and experience will be needed. Therefore, with a view to this probability, I should be pleased to hear from you again on this subject, and to know what salary you would expect as amalgamator, assayer, etc., with charge of the mill.

You will understand also that I should prefer to know what testimonials as to character and capability you possess, and would moreover have you informed of my unwillingness to remove you from your present position unless with the consent of those interested.

Trusting that the above may meet your approbation, I shall expect and hope to hear from you soon again.

With respect, I remain,

J. A. DE LAGNEL.

MAZATLAN, MO., *5th January*, 1867.

Mr. D. J. GARTH, *Treasurer La Abra S. M. Co.:*

SIR: I hasten to acknowledge the receipt of your three letters of the 1st, 10th, and 20th of November, respectively, and in response will endeavor to place you in possession of all the necessary information to enable you to judge of our condition and prospects here.

In your latest letter, the 20 Nov'r, you there informed me that you can meet no further drafts upon you; yet I had already, about the 17 Nov'r, drawn on you as treasurer for the sum of seven thousand dollars.

I wrote to you fully by the same mail, and hoped to be able to send the letter via Acapulco, and thus reach you before the draft. In this I was disappointed, and my letters having gone via S. Francisco will reach you at the same time that the d'ft comes in for payment. I trust that, despite what you say, you will find some way to satisfy the draft, for if it goes to protest it will be of incalculable injury to the best interests of the co. To me the consequences of such a thing would be both mortifying and most embarrassing, but to the comp'y's interests they would prove far more serious.

It is therefore that I urge upon your serious consideration the interest at stake, and pray that a prompt settlement be given upon presentation.

The prospect at present is most favorable; the mill is in working order, the retort and furnaces ready for the separation and preparation of the silver for market, and the ditch so far advanced when I left that I expect to find it completed upon my return.

The stock of ore is large, and, I believe, good, though that remains to be seen.

Of the success I have strong hopes, and the few rough notes on the back of your letter, made by Col. Gilham, respecting the composition and class of ores, gives additional ground for hope.

I have just received application from a German metallurgist, said to be both competent and reliable. I have written to him for testimonials, etc.

He has been in this country three years, and has worked as amalgamator at the Dayton Mills, in Washoe or Nevada.

I am here for the purpose of securing some articles needed for the store, to keep up the stock and meet the wants of our people.

Articles are scarce and prices high, because of a difference or difficulty between the merchants and the Gov't respecting the duties to be paid for the goods ordered, and now in ships almost in sight. The condition of affairs is not satisfactory; people feel no security, and some of the most wealthy are determined and preparing to leave for Europe to remain.

Respecting what you say about the contraction of bad debts, large or small, I would inform you that I have endeavored to carry out your instructions. As to the amount received from cash sales of mdse., it is very small, the number of people about Tayoltita being less than formerly.

As those employed by me receive two-thirds of their earnings in goods, they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so, between a diversity of causes, the receipts of cash are very small indeed.

The *Guadalupe Mine* does not improve. When I left the hacienda the sup'd't of that co. had only four barreteros at work, and said that if the metal did not improve he would reduce the force one-half.

64 I really think that the property is now without value, though what may be hidden none knows.

I had written to Mr. Mills, pres'd't of the Bank of Cal., and to the house of Weil & Co., asking that they would inquire and ascertain market value of Guadalupe stock, if it had any at all.

I have no reply from Weil & Co., but the Bank of Cal. sends me the following extract: "The sec'y of this co., Mr. Pfeiffer, says there is none of this stock for sale

that he knows of; on the last assessment which was levied on same, some of it was advertised for sale for assessments, but before day of sale it was all paid. He would not say what it could be bought or sold for, nor would he say who the stockholders were, except that there were two or three who held very largely of the stock, some 2 or 400 shares each. When asked what he would sell his stock for, his reply was, "I would not sell a all, but would rather buy, if I could get it cheap." When asked if the stock was worth 10 or $15 per share, he said he thought you could buy all you wanted at those figures."

You will perceive how loosely these things are done where no interest exists to make one guarded; from the preceding it is evident that it was known that I made the inquiry, though it is true that another view can be taken of it.

Whether the company intends to build works, etc., etc., it is doubtful at any rate. 'Tis true the letter I read, similar in character to the one you received, said so, but I find out here that the sup'd't is trying to sell the five-stamp battery which they have had here for two years. Now, the battery is a portion of the machinery always needed whether the system followed be American or Mexican.

I think that they might have intended to go ahead with the work a short time back, but scarcely believe they would sell the battery if they intended to build, nor can I understand the matter of going to work after the mine has failed to yield anything.

The metal from this mine, beneficiated at Guarisamay, gave only about $56 to $60 per ton. You write to me in a suggestive way that does not at all meet the object in view.

You advise me in an undecided manner to sell the co.'s interest in this stock, but do not say so positively; and, again, I have no means of doing so save through letter communication and third parties, strangers to me, in California.

Why not, as I before suggested, determine the question and duly authorize some party of respectability to act as your agent and sell, giving necessary power of attorney.

In Mexico I am really more cut off from sources of information or communication with Cal. than you are. You ought to take into consideration, too, the fact that I am very loth to venture to dispose of your property. If the sale should prove acceptable, all is well; but if the property be sold for a song and the mine should ultimately prove good, the blame would be with me.

I give you all the information I can gather. You are therefore as well informed as I, and can instruct an agent as readily as, or more so than I can. The property at Guarisamey is "*in statue quo;*" the works have caved during the last rainy season, and I tho't of putting some men in and working upon it to restore it, so that you might get in, which is prevented now by the fallen mass.

Don Juan Castillo is here; will go in time to Durango, and proposes visiting Tayoltita. He called on me, and showed me a letter he had received from you in response to one written by him to you from Balboa, Spain.

He expresses great interest in the enterprise and its success, but makes no disguise of the fact that he thinks one hundred thousand dollars too much has been spent; that a different plan would have been his, viz, to work with improved battery to perfect the crushing, but to use no other American machinery—to use the arastres and patio as of old. He thinks that the mode.

Under the circumstances there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent unless he sees with his own eyes good grounds for the investment. American credit is poor, and American success as miners in this country is doubted, I find.

After we get to work, there is much work to do to put the mines, the haciendas, etc., in that order which is desirable. Now we strive to begin to mill and yield; to be self-sustaining and do somewhat more, if possible.

I have in my letter to Mr. Hearn, which is not official, stated that you had spoken about my remaining here; to this I desire to give an immediate and distinct answer. I could not under any circumstances, or for any consideration, consent to remain longer than the period contracted for.

I desire to do rightly in all things; but regard for myself and my immediate family demands that I should be elsewhere as soon as possible.

You will please, therefore, bear in mind what I long since communicated to you, viz, my desire and determination to relinquish the position upon the close of my year as contracted for.

To this course I adhere, and shall expect to have a successor sent out or named.

Mr. Cullins and Mr. Exall are both with me; the two mines are again at work, or being worked, and I desire to make an addition of one or two more soon.

The prospect from the mines is not so good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition. Enclosed I send the monthly papers.

Yours, respectfully and truly,

J. A. DE LAGNEL, *Sup'd't.*

MAZATLAN, M'o, 5 *January*, 1867.

WM. C. RALLSTON, Esq're,
Cashier Bank of California:

SIR: The steamer just arrived has brought to me your letter of the 26th ultimo, together with the statement of my % and the returned check.

After comparing the above with my % here, I find it correct, and acknowledge as requested by you.

Please accept my thanks for your kindness in making the enquiries respecting the stock (mining) and its probable worth in San Francisco.

Very respectfully,

J. A. DE LAGNEL,
Sup'd't La Abra S. M. Co.

MAZATLAN, 5 *January*, 1867.

WM. C. RALLSTON, Esq'r,
Cashier Bank of California:

SIR: The steamer which arrived yesterday brought to me your letter of the 26th ulto., together with the statement of my % and the returned checks.

After comparing the above with my % here, I find it correct, and acknowledge, as requested by you.

Please accept my thanks for your kindness in making the enquiries respecting the mining stock. I desire to inform you that I have drawn against the balance in your hands, in favor of Echenique, Peña & Co., of this place, for two thousand four hundred and thirty-seven dollars and ninety-five cents ($2,437.95); and in favor of J. P. Newmark (I have not my book with me, and write from recollection) for ($500.00) five hundred.

Very respectfully,

J. A. DE LAGNEL,
Sup'd't La Abra S. M. Co.

HACIENDA DE LA ABRA, *January* 13, 1867.

Col. J. O. DE LAGNEL,
Supt. La Abra S. M. Co.:

SIR: As you was to have returned to the hac'da from Mazatlan by the 2nd inst., and as I have heard nothing direct from you since you left, I am naturally anxious concerning the cause for your long absence, and send the bearer to meet you at Mazatlan or on the road in order to ascertain of your safety and the time we may look for you here.

Also, in case you have not yet left San Ygnacio, to inform you that there is not sufficient money on hand to meet the next memorias, and there are bills for lime and coal due, as you are aware, and the holders only await your return to call for their amounts.

The ditch, dam, etc., will be entirely completed by Wednesday next, and I would have your instructions as to what employ the mason upon after that time, or discharge them.

Hoping to see you soon safe and well, and that you may experience no trouble on the road,

I remain, sir, yours, most respectfully,

CHAS. E. NORTON,
Sup't pro tem.

All well here.

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66 HACIENDA DE LA ABRA, 15 *January*, 1867.

Mr. G. A. NOLTE, *Cosala:*

SIR: Upon my return I find the mill, etc., so far advanced as to warrant me in writing to you again upon the subject of your employment as amalgamator and assayer.

I desire to put the mill in operation at the earliest practicable moment, and will be ready within a week or less. Therefore would like to have you present as soon after the receipt of this as posible.

The question of compensation is the only unsettled point, and upon this head I can make no direct proposition, though as Col. Norton leaves in the morning for your place he will see you, and I have authorized him to arrange with you if possible.

You will understand, of course, that aside from general necessity for care in expenditure, that we are just starting the work, after a heavy outlay of money in build-

ing, etc.; therefore for the present must exercise additional care in matters of this sort.

Should you determine to come, as I have already intimated, I would wish to have you here at once, as there are many minor things yet to prepare.

Very respectfully,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, 15 *January*, 1867.

Col. C. E. NORTON:

SIR: I have written a letter to Mr. G. A. Nolte, of Cosalá, which you will please deliver to him for me, and as the question of compensation is one I can not arrange at a distance from him, you will please explain to him what I endeavor in my note to him to make plain, viz, that we are only just starting our operations, after heavy outlays, and as yet no returns.

Moreover, he is, as it were, a stranger, and his merits unknown.

You will endeavor to secure his services at the lowest possible figure, and I would put as a limit $150 per mo.; though should you find it impossible to arrange for less than 200 (which I understand he receives at present) you may contract at that price, dependent upon results.

While in Cosalá you may also contract for some eight cargas of panocha, *delivered here*, with a credit of three months.

Urge upon Mr. Nolte, should he consent, the necessity for promptitude.

Very respectfully,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, 30 *January*, 1867.

Mr. J. G. RICE,
Sup'd't Durango S. M., San Dimas:

SIR: I send by arriero with mules for one carga of panocha, which will be needed here, perhaps, until the new panocha arrives.

The panocha purchased by me elsewhere was counted 768 cakes of ten and half ounces each to the carga.

Please be explicit on this point, as to what constitutes a carga; and send bill with it, charging it to my %.

You will please send me as good as you have, as damaged panocha will not go, except by virtue of necessity, and at a sacrifice.

Very respectfully,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, 30 *January*, 1867.

Co. C. E. NORTON:

SIR: I find it necessary to leave for a few days, and as you will probably return before me, I leave this note for your information in my absence. A partial examination of the matters committed to your special care exhibits mistakes which require explanation from you.

Until this is done, therefore, I could not entrust these matters again to your hands, though I trust you will be able to satisfy me in regard to this. In the meanwhile, therefore, remain as a guest until I get back, which will be in a few days.

67 Mr. Exall I leave in charge during my absence; therefore you need not trouble yourself with anything connected with the establishment.

This, of course, is a thing in which you are too deeply interested to slight or treat with indifference, and I trust you will agree with me as to the propriety of the course pointed out.

Respectfully,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, 30 *January*, 1867.

Mr. C. H. EXALL:

SIR: It being necessary as you are aware, for me to go to the port of Mazatlan at this time, I leave you, during my absence, in full charge of the hacienda, its material, and business, to control and manage as your best judgment dictates, under existing circumstances.

Should Mr. Norton return during my absence, you will please give him the note I have written and placed in your hands; and as, therein, he is distinctly informed

by me that I desire him to remain only as a guest until my return, you will not any mit him to have access to the books or papers of any description, nor interfere inperwise with the affairs of the establishment.

To provide against any possible contingency that may occur, I make over to you (in case of death or serious accident to myself) all power or authority vested in me in virtue of my agency as superintendent for the La Abra S. M. Co.

Very respectfully,

J. A. DE LAGNEL, *Sup'd't.*

TAYOLTITA, *Enero* 30 *de* 1867.

Sor. D. ANTONIO ARAIZA, *Guarisamey:*

MUY SOR. MIO: Yuclusá recibirá Vd. una carta escrita por D. Juan Castillo de Valle sobre el negocio de la cuida de la mina del Promontorio.

Desearia saber si Vd. accepta la proposicion hecha con instrucciones de la compañia en la carta mencionada.

En tal caso se servirá Vd. hacerlo por escrita dando asimismo noticia del cambio al que hoy está esta empleado como guardian, que es Luis Aguilar.

Sin otro cosa por ahora queda, S. S.,

J. A. DE LAGNEL,
Pr. C. H. EXALL.

[Translation.]

TAYOLTITA, *January* 30, 1867.

Mr. ANTONIO ARAIZA, *Guarisamey:*

SIR: Inclosed please find a letter written by Mr. Juan Castillo de Valle on the matter of the care of the mine Promontory.

I would like to know whether you accept the proposition made in said letter by instructions of the care of the company.

In which case you will be kind enough to let me know by mail, giving likewise notice of the change to Louis Aguilar, who is now the keeper.

Without anything else for the present, I remain your servant,

J. A. DE LAGNEL,
Per C. H. EXALL.

MAZATLAN, MEXICO, 5*th February*, 1867.

WM. C. RALLSTON, Esq.,
Cashier Bank of California, San Francisco:

Sir: I inclose herewith duplicate draft on D. J. Garth, esq., of New York, for seven thousand five hundred dollars in your favor.

Please place this amount to my credit, as also the premium you may allow according to ruling rates at date of reception.

Against this draft, and the balance of four hundred and seventy dollars (being accrued premiums on former drafts), previously to my credit, I have drawn in favor of Echenique, Peña & Co., of this place, for seven thousand nine hundred and seventy dollars.

I am, sir, very respectfully, your obedient servant,

J. A. DE LAGNEL,
Sup'd't La Abra S. M. Co.

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68 MAZATLAN, MEXICO, 5*th February*, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co.:

SIR: I had hoped, and fully expected, to be able by this time to send forward some return for the outlay incurred by the company in the prosecution of its enterprise; but am disappointed in not yet having succeeded in bringing on the water in sufficient quantity to drive all the machinery.

I have therefore set to work upon the dam and ditch again, and by this time fully expect that it meets the requirements of the case.

I shall, immediately upon the completion of the work above alluded to, put the mill in operation, and hope to be able to meet your expectations.

I am in hopes of being able to export by authority, upon the payment of a certain percentage, the bullion, or part of it, direct to New York. This I desire to do, believing that a few bars of the metal to speak for itself would be of more value to the company than the proceeds in coin.

The supplies laid in during the past year being in great part exhausted, and a new

supply being absolutely necessary to keep the mines, &c., going, and there being necessity for ready money in order to purchase the requisite supplies, I have drawn upon you for seven thousand five hundred dollars in favor of the Bank of California.

This I would not have done had it been possible to do otherwise; but no assistance can be had in this country.

I have satisfied myself on this point, and had only the alternative to stop operations or draw on you. Thinking that the latter would be the less objectionable course, despite the difficulties in the way, and believing that the mill will give it back more speedily in this than any other course to be adopted, I have acted as my best judgment dictated, and as I trust you will approve.

The mines are looking better, yielding more, and I believe, richer metal, and the outside attendant expenses of building and improvements will be suspended as soon as the ditch and dam serve their purpose.

In explanation of my presence here, I desire to state that it was absolutely necessary I should be here in person to arrange for the funds needed and to purchase supplies required at once.

The country hereabouts is quiet, though perfectly stagnant, and exhausted by the past year's work.

It is difficult to procure transportation in consequence of the seizures, sales, or confiscations that have occurred within the period named.

Trusting that my action may be approved.

I remain, yours, with respect,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE LA ABRA, 13 *February*, 1867.

Col. C. E. NORTON:

SIR: This will authorize you to proceed to San Ygnacio, San Juan, or point below for the purpose of purchasing the following stores needed for the approaching season, restricting yourself to the prices annexed: 20 cargas panocha (10 oz.) at $50.00; 150 arrobas lard, at $6.00; 20 cargas beans, at 12.00; 150 cargas corn, at 6.00. These stores must be delivered here free of duties, and I will pay for same on delivery of the whole amount contracted for by each party, respectively, by draft on Mazatlan.

You will make written agreements and give one copy to the party contracting, instructing each one at the time to bring and exhibit the contract at the time of delivering the produce.

The duplicate copy you will retain and bring for my information.

The panocha must be delivered, say one-half at once, and in like manner with the lard and other articles. In explanation of the paragraph above, respecting the mode of payment, understand that a portion (say ⅓ or ¼) will be paid upon each delivery, but the total amount due will be paid only upon completion of the contract.

I do this only to insure observance of the engagement.

For this service I will accept your proposal of $100.00 per mo., and in addition will allow for your expenses $1.25 per day. As a matter of course, these articles are to be of the best quality, and the panocha I prefer is that of 10 ounces. The lard should be delivered in skins, for storage.

Respectfully,

J. A. DE LAGNEL,
Superintendent.

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69 HACIENDA DE LA ABRA, 14 *February*, 1867.

Mr. J. G. RICE,
Sup'd't Durango S. M. Co.:

SIR: The expected supply of panocha not having yet arrived, I write by the arriero to ask that you send me another carga, to last until such time as ours may arrive.

You will oblige me by forwarding a bill of charges for this and the previous carga purchased a short time since.

This is requisite in order to enable me to know at what price we can sell the panocha to our people.

With thanks for past kindness,

I remain, yours, respectfully,

J. A. DE LAGNEL, *Sup'd't.*

HACIENDA DE "LA ABRA," *Febrero* 14, *de* 1867.

Sor D. ANGEL CASTILLO DE VALLE,
Durango:

MUY SOR MIO: Para suplir él consumo de la piña estacion, me hacen falta, las cosas siguientes que desea Vme remita con la mayor brevedad.

Mi surtido de Sebo es reducido é importa mucho aumentarlo, sin perdido de tiempo. Nopudiendo pasar yo a Durango y recordando nuestrós tratos anteriores, me dispo a Vd en este caso, espero la moderacion posible de precios y que los efectos sean de buena calidad. Deposito en Vd plena confianza y pasa el pago depositaré, come anteriormente, el dinero en la casa de Echequren, Quintana y Cin, con plazo de cuatro meses.

Los efectos son los siguientes:

100 at sebo=1 caja cigarros doubles, 1 caja cigarros sencillas—1 caja puros. 4 docenas Zapatones de Cordoban (de Mujer surtido, de 6 puntos 2 docs., de 7 puntos 1½ doc. y de 8 puntos 6 pases.

4 doc. Chanclas de Varilla de las mismos dimensiones que el Zapata alto.= 1 doz. zarapes mitad de medio labor y mitad de labor entera.

1 doc. sombreros de palma, surtido de copa redonda y plano. 1 doc. sombreras de lana, (del pais) surtidos con dos o'tres de palda ancha. 50 cargas costales=5 gruezas larzas. 8 gruezas de logas=20 piezas manta trigueña del pais. Sin mas por ahora, quedo como siempie afrnd.

Y. S. S.
J. A. DE LAGNEL.

[Translation.]

HACIENDA OF LA ABRA, *February* 14, 1867.

Mr. ANGEL CASTILLO DEL VALLE, *Durango:*

SIR: In order to supply the consumption for the next season I need the following things, which I wish you to send to me as soon as possible.

My supply of tallow is limited, and it is very important to increase it without loss of time. Not being able to go myself to Durango, and remembering our previous dealings, I apply to you in this case expecting that the prices be moderate, and that the goods of good quality. I have full confidence in you, and for the payment I will deposit, as I did before, the money at the house of Echeguren, Quintana & Co., in four months' time.

The goods are the following: 100 arrobas of tallow; 1 box double cigarettes; 1 box single do.; 1 box cigars; 4 doz. ladies' buckskin shoes, assorted, of 6 points; 2 doz. of 7 points; 1½ doz.; and of 8 points 6 pairs; 4 doz. slippers of the same sizes as the high shoe; 1 doz. blankets (*zarapes*) half full work, and the other half of half work; 1 doz. straw hats, of assorted, of round and flat head; 1 doz. woolen hats (domestic manufacture) assorted, with two or three of wide brim; 50 cargas *carsales* (some kind of bags or sacks); 5 gross ropes; 8 gross thinner do.; 20 pieces dark cotton (of domestic manufacture).

Without anything else for the present, I remain, as ever, your affectionate and sincere servant,

J. A. DE LAGNEL.

HACIENDA "LA ABRA," *Febo.* 25 *de* 1867.

Cuido. Gefe politico, del partido de San Dimas:

Mando á D. Apolonio Sainz, con los papeles y quias de mi factura de efectos, de Mazatlan que recibi el sabado pmo. pdo. para arreglar los derechos que causaren. Hoy en la mañana me presenté á la oficina respectiva con dichos papeles para hacer el pago que corresponde á este estado, perase me dijo que esta oficina consulto á esa de su cargo y que no podia determinar sin el consentimiento de esa superioridad.

70 Para evitar equivocos ó confusiones va el mencionado Sainz lo mas pronto que se pudo para esplicar y averiguar la sum que se debe. Los efectos no llegaron á un tiempo, pero en dos dias distintos y con el consentimiento del Receptor se dejo el ar reglo de las guias para la llegada, de los otros. Habiendosa recibido el Sabado en la tarde y siendo necesario examinar las Facturas, pases, &c., &c., ere imposible presentarlos antes de hoy, y no comprehendo come se informa con tanta violencia por este Sor. Receptor, debiendose considerar que los estrangeros no estamos bien informados de las formalidades de costumbre y que se nos debe ver con la consideracion de tales.

Soy de O. S. S.

J. A. DE LAGNEL,
Administrator.

[Translation.]

HACIENDA, "LA ABRA," *February* 25, 1867.

To the Citizen political chief of the District of San Dimas:

I send Mr. Apolonio Sainz with the papers and "guias" (document to prove that the customs and duty are paid at the custom-house) of my invoice of goods from Mazatlan, which I received last Saturday, in order to settle the duties to be collected. I presented myself this morning at the proper office with said papers to make the payment belonging to this State, but was told that this office had consulted that in your charge, and could not decide without the consent of that superiority.

To avoid mistakes and confusions, I send the said Sainz as soon as possible, in order to explain and ascertain the sum due.

The goods did not arrive at the same time, but on two different days, and, with the consent of the receiver, the arrangement of the "guias" was left till the arrival of the others. The goods having been received Saturday afternoon, and it being necessary to examine the invoices, passes, &c., &c., it was impossible to present them any sooner, and I do not understand how this receiver gives such a strong report when it ought to be considered that we foreigners are not well informed of the customary formalities, and that we ought to be treated as such.

I am, your sincere servant,

J. A. DE LAGNEL,
Superintendent.

Recibi la Guia No. 163, acompanaba los efectos remitidos por la Casa de Echenique, Peña y Cia, del comercio de Mazatlan, y la he comparada con la cuenta que Vd. me remitio el 24 de Febrero, pmo. pdo.

Dicha cuenta es de conformidad con la mia, si, exceptuo los derechos de internacional que fueron pagados en Mazatlan.

El esto, veinteun pesos treinta y seis centavos, estoy pronto á pagar, perono me es posible hacer el mismo pago dos veces, y si algun equivoco hay fué el hecho de los empleados de la Admon. de Mazatlan, y en consecuencia de lo accustumbrado el año pmo. anterior.

Es evidente que el heco de las Autoridades de la Aduana de Mazatlan—me deja libre de todo responsibilidad, y si alguna hay, debe recaer á los que á ella dieren lugar.

Espero de la bondad de Vemo.—se sirva mandar la Fomaguia para la Guia No. 163, ya mencionada prévia la admission de la suma que estoy dispuesto á pagar.

Independencia y Libertad.

Tayoltita, Marzo 10 de 1867.

J. A. DE LAGNEL.

Ciudadano Receptor de Rentas de Tayoltita.

[Translation.]

I received the "guia," No. 163, which accompanied the goods sent by the house of Echenique, Peña & Co., of the commerce of Mazatlan, and I have compared it with the account which you transmitted to me on the 24th ultimo.

Said account agrees with mine with the exception of the duties of Internacion which were paid at Mazatlan.

The balance, twenty-one dollars and thirty-six cents, I would be ready to pay it had it not been impossible for me to make the same payment twice. If there is any mistake it was committed by the employés of the custom-house of Mazatlan on account of the custom observed last year.

It is plain that the mistake of the custom-house authorities of Mazatlan frees me from all responsibility which, if there is any, ought to fall on the persons who occasioned it.

71 I hope of your kindness to please send me the *return guia* to the *guia* No. 163, already mentioned, previous to receiving the sum which I am disposed to pay.

Independence and liberty.

Tayoltita, March 10, 1867.

J. A. DE LAGNEL.

To the CITIZEN RECEIVER OF REVENUES, *Tayoltita.*

HACIENDA DE LA ABRA, *Marzo* 19 *de* 1867.

Señor D. JOSÉ MA. MILAN,
Aguas Frias:

El portador de esta, Victoriano Sandoval, va á la Agua Frias por el resto de panocha, la que se servirá Vd. entregarle.

Como los cacastles están muy pesados del modo que estan empacados, lo he autorisado para reempacarlos—siendo el responsable por ellos hasta illegar aqui.

Estoy entendido que una cargo de panocha hace tres cacastles, si asi es, y todos tienen el mismo numero, hay todavia que entregar cuarenta.

Hayame Vd. favor de decirme si estoy bien informado, diciendo cuanto fue traida por Huerta.

Sin mas, quedo, &c.,

J. A. DE LANGEL, *Admdr.*

[Translation.]

HACIENDA OF LA ABRA, *March 19th*, 1867.

Mr. JOSÉ M. MILAN,
Agua Fria:

The bearer of this, Victoriano Sandoval, goes to the Agua Fria after the balance of the brown sugar, which you will please deliver to him.

As the bags are very heavy the way they are put up, I have authorized him to repack them, and make him responsible for them till their arrival.

I understand that a carga of brown sugar makes up three bags; if that is so, and they all have the same number, fifty more will have to be delivered yet.

Do me the favor to tell me if I am well posted; and, also, how much Huerto brought.

I remain, your affectionate and sincere servant,

J. A. DE LAGNEL,
Superintendent.

HACIENDA DE LA ABRA, 19 *March*, 1867.

Mr. F. SUNDELL,
In charge Durango Silver Mines, San Dimas:

DEAR SIR: I send by Mr. Edgar two lbs. best black tea, at $2.25, in accordance with your request. Should you require other tea of inferior quality, for sale, we can send it to you; but presuming that you wished it for the house, I send this. I could have sent by the old man from San Dimas, but hearing that he had not delivered Mr. Carr's boots, I thought he might do the same with the tea.

I return also the wire cloth, it not suiting the purpose.

Very respectfully,

J. A. DE LAGNEL.

MAZATLAN, *April* 10, 1867.

WM. C. RALLSTON, ESQ.,
Cashier Bank California:

SIR: I enclose herewith duplicate drafts for five thousand dollars (gold coin) in your favor against D. J. Garth, esq., of N. Y.

Against this amount I have drawn on your bank, in favor of Echenique, Peña & Co., of this place.

Please place the above amount, with premiums, to my credit, and oblige,

Yours, respectfully,

J. A. DE LAGNEL.

TAYOLTITA, DURANGO, MO., *May* 6, 1867.

72 D. J. GARTH, Esqr.,
Treasurer La Abra S. M. Co.:

Yours of the 24th April was received some days previous to the departure of Col. De L., who will no doubt reach N. Y. sometime prior to the reception of this. Col. De Lagnel will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make any further mention of them.

Since his leaving I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal; a light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since, and which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it.

Col. De Lagnel will give you an account of the mill and its work, which did not exceed our expectations. * The Col. was to have sent from San Francisco on his way

through a set of screens much finer than the ones we had been using. I expect them down by next steamer. The new screens may be a great improvement on the old ones. At all events, I will give them a trial, and with the best possible advantage.

I have discharged the greater portion of the hacienda hands. The oven for roasting the ore, which was commenced before the Col. left, is nearly completed. There is no improvement in the difficulties which we have had to contend with in reference to buying goods and getting duties reduced. In fact, instead of an improvement, they are adding additional taxes. Col. De L. before leaving laid in a partial supply of provisions for the rainy season. I have since bought corn at a much lower price than has been generally paid for it.

I start for the port in the morning; while there will buy a light assortment of goods, which I must have; my intention is to buy sparingly of everything. If there is anything special which you desire a statement on, please inform me and send a letter of instructions.

If you have any papers which refer to the boundaries of the different mines belonging to the co., please send them out by earliest opportunity; we may need them here.

Hoping that my next may be of a more cheering nature.

I remain, yours, with respect,

C. H. EXALL.

MAZATLAN, *May 17th*, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co.:

DEAR SIR: I arrived here on the evening of the 12th inst. The steamer not having returned from Guaymas, on its return trip I had to.

I succeeded in recovering the bullion which the authorities here took from Col. De L., by the payment to the different government officers and getting it aboard steamer of the sum of $247.00. I had either to pay the amount mentioned, or allow them to retain the silver, its value being much more—there being a large percentage of gold in it. I would, as a business transaction, have bought it back from them. Aside from this, my desire to get it to N. Y. in its present state, and the probability of its being of much value to you, these motives induced the expenditure in its recovery. I have it shipped by Wells, Fargo & Co.; valuation I gave $300. Expenses $15, to be paid in N. Y.

Since being here I have bought lightly of dry goods and groceries. My supply for the rainy season will be enough, provided we work a limited number of hands. Not knowing what may be your intention in reference to working the mines, whether with a large or small force, induced me to be on the safe side, and to make my purchases as small as possible.

A day previous to my leaving Tayoltita, I spent a day at the mines. While at the La Abra I picked up two or three pieces of ore, which was then being taken out. Made no selection. The evening before leaving the hacienda for this port, I assayed the several pieces. The assay was *better* than previous assays of any ore on the patio, giving me $178 in silver and a large percentage in gold. It being very late in the day before I got through melting down, was unable to get an accurate gold value.

The labor from which this ore was taken is improving and the vein widening ever since it was first started on. In my next I can give you a more correct idea of the La Abra metal, as by that time the different labores, which are now being worked, will have undergone a better test.

The screens arrived by last steamer. I will start the mill—working the Cristo ore—or if that will not pay, will work the ore that does as soon as I get back. I leave this afternoon for the mines.

No news here of importance. Mazatlan dull. Weather oppressively hot. It
73 is said the rainy season will commence earlier than usual, probably by end of June. Please forward the inclosed letters.

Kind regards to friends.

Respectfully,

C. H. EXALL.

MAZATLAN, *June* 13, 1867.

W. C. RALLSTON, Esq.,
Cashier Bank of California, San Francisco:

Inclosed please find my draft in favor of Bank of California, and on D. J. Garth, New street, New York, for three thousand dollars, which you will please negotiate, and place proceeds, with current rate of exchange, to my credit.

Unless the house which we do buisness with here, Echenique, Peña & Co., is in need of money on San Francisco (which is not the case this steamer), I find it difficult to dispose of individual drafts.

By next steamer you will much oblige me by sending me, care of Echenique, Peña & Co., of this place, a letter of credit or of deposit, or some paper which I can negotiate, in sums of one thousand dollars each, to cover the amount I draw for.

Colonel de Lagnel informed me by May steamer that when going through San Francisco he called upon you, and what moneys he had with you, had them transferred to my credit. Please let me hear from you by next steamer, and oblige,

Yr. obt. svt.,

C. H. EXALL,
Actg. Sup. La Abra M. Co.

MAZATLAN, *June* 11*th*, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co.:

DEAR SIR: I avail myself of an unexpected opportunity to send a letter through direct; can only write a few lines, as the party who takes my letter is now in waiting. I am down buying supplies for the rainy season; will await the arrival of steamer from San Francisco; she is expected to-morrow. Everything at the hacienda is getting on as well as can be expected. I will, of course, write you more fully by steamer. My principal reason for writing now is to inform you that I will be compelled to draw on you by this steamer for three thousand ($3,000) dollars.

The steamer will leave this port for S. Fco. on the 27th, and will reach San Francisco about 4th or 5th of July. I will draw through B'k of Cal. I am compelled to have funds to lay in supplies; have not enough on hand to do so.

Hoping this will not inconvenience you, I remain, respectfully,

C. H. EXALL,
Act'g Sup. L. A. S. M. Co.

TAYOLTITA, *Julio* 11*th de* 1867.

Al Sr Jefe Politico de San Dimas:

MUY SR MIO: Su carta de el 10 del corriente fue recibido ayer tarde. Y segun sus contentos yo no pensaba que guadaba respuesto y no tenia intencion de contestarle.

Está mañana fue avisado que el respuesto era esparaba por V. Sñ. Y en respecto á el compromiso de que hablaba V. era hecho cuando estu boen Mazatlan, tenia fuerza hasta que yo volviera y entonces yo pudiera tratar con V. lo mejor que pudia y en cuanto si V. hubiera tomardo conocimiento de las circun stancias y causas que causaba el paralizacion del los trabajos.

Mejores sentivos le hubiera mostrada á V. que posible á hacer diferente.

He ofrecido á los operarios toda las menas á partido por carga y algunos esta ya trabajando y diciendo que con este adamos entendido amatosamente sobre este asunto.

Sin mas, soy su affectemo. servador,

CHARLES H. EXALL,
Admstor. La Abra S. M. Co.

[Translation.]

252 TAYOLTITA, *July* 11, 1867.

To the POLITICAL CHIEF OF SAN DIMAS:

DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about the affair, I am, your most humble servant,

CHARLES H. EXALL,
Supt. La Abra S. M. Co.

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73 *Statement of the cash receipts and expenditure at the hacienda de La Abra Tayoltita in the month of April*, 1867.

Rec'd from J. A. de Lagnel in Tayoltita	$171.73	
" " " " Mazatlan	7,434.88	
" Cash sales during month	82.98	
" W. S. Durkee	2.00	
" Guadp'l S. M. Co	43.92	
" Expenses from W. S. Durkee	10.00	
" J. G. Edgar	3.81	
		$7,749.32

Statement of the cash receipts and expenditures, etc—Continued.

74

EXPENDITURE.

Paid house expenses			$28.67
" Echenique, Peña & Co., for md'se	$1,125.53		
" J. R. Moller & Co	534.31		
" C. H. Exall on %	871.86		
" A. B. Elder, bal'ce to 1st Ap'l	326.48		
" J. J. Skinker on %	38.09		
		2,896.27	
Machinery and building:			
Paid memorias during mo	75.20		
" B. Romero % lumber	6.00		
		81.20	
Expense % paid for refg. silver	6.75		
" for recovering money taken from De L	237.66		
" " trip to Mazatlan	76.37		
" " postages	6.45		
		327.23	
Dan'l Sullivan, bal'nce in full to 30th April		53.55	
Store % for balances and brooms		3.56	
Guadalupe S. M. Co., for balance		10.13	
La Luz mine m's during mo	84.13		
" freight on ore	15.13		
		99.26	
"Abra" Do memo. during month		143.52	
N. A. Sloan, p'd on %		47.25	
Geo. Cullins, " " "		4.00	
Maiz % " M. Avalos		11.19	
Mdse. % p'd Huerta ft. on Panocha	8.10		
" Sandoval do	146.00		
" diff'nce in exchange	.88		
" for meats, etc	52.25		
" R. Emerson	1.50		
" bill of medicines	5.50		
" Echenique, Peña & Co	9.50		
" " " for Laros	2.50		
" Bargero, corn, beef, and onions	68.35		
" difference in corn	.66		
" duties on goods from Mazatl'n	3.13		
" Ygno. Zorozteza, for candles	18.88		
" F. Rosas, for corn	40.25		
		353.54	
			$4,060.37
Balance on hand carried to May			$3,689.95
In Tayoltita		1,181.36	
" Mazatlan with Echenique, Peña & Co		2,508.59	
		$3,689.95	

Statement of the cash receipts and expenditures of the hacienda of La Abra in Tayoltita, for the month of May, 1867.

Balance on hand brot. from April		$3,689.95
Cash sales during the month		103.60
		$3,793.55

EXPENDITURES.

Mdse. act. pd. Crisanta Huerta, for corn	$34.37		
" Duties on, case cigarros	27.25		
" Pedro Egeda, for corn	36.00		
" Ascencion Velazquez, for corn	29.10		
" L. Manuelos, " "	19.25		
" Y. Manuelos, " "	18.56		
" V. Calderon, " chilo	42.40		
" Crispin Rubio, " corn	21.31		
" Behrendt & Co., boots and shoes	47.50		
" H. Bartning & Co., dry goods	20.00		
" J. Heymann & Co., " "	1.88		
" J. Redo, " "	19.62		
75 " J. R. Moller & Co., dry goods	19.50		

Statement of the cash receipts and expenditures, etc.—Continued.

Mdse. act. pd. Careaga & Co. " "	$145.62		
" Ammarin, medicines.....	19.88		
" Coles, bill storage.....	3.25		
" For belts and hat.....	7.25		
" Juan Salazar, for corn.....	45.23		
" Duties on goods from Mazatlan.....	30.00		
" J. M. Sanchez, for onions.....	20.40		
" Jesus Mayorga, for dried beef.....	25.25		
" Jesus Velasques, " corn.....	26.13		
" Cristino Meña, " "	24.19		
" C. Balvesde, " "	49.96		
		$733.90	
House exps. paid for beef, vegetables, and servants.....		26.56	
La Abra mine, " memorias during month.....		170.98	
La Luz mine, " " "		101.86	
Mach. and building, " " "		101.66	
C. H. Exall.....		175.81	
Wm. Carr.....		.32	
John J. Skinker.....		186.38	
Expense % pd. for shipt. silver.....	9.50		
" postages.....	2.50		
Remitted Weil & Co.....	51.75		
Pd. exps. trip to Mazatlan.....	56.59		
" Correo from San Dimas.....	.25		
		120.59	
Geo. Cullins.....		15.00	
Jas. Granger.....		241.50	
A. O. Sloan.....		1.50	
A. B. Elder.....		22.50	
Mdse. % pd. M. Abalos.....	9.50		
" Julian Lazes.....	12.50		
" For lazos and blankets.....	6.00		
" Exps. on road to and from Mazatlan....	51.50		
		79.50	
Mill % remitted H. J. Booth & Co., for screens.....	33.07		
Paid freight on "	3.50		
		36.57	
V. Sandoval, on %.....		8.00	
			$1,842.66
Balance on hand carr'd to June.....			1,950.89
In Tayoltita.....	1,869.80		
" Mazatlan, with Echenique, Peña & Co.....	81.09		
		1,950.89	

Statement of the receipts and expenditures at the hacienda of La Abra in Tayoltita for the month of June, 1867.

Balance on hand from May.....		$1,950.89	
Cash sales during month.....	118.47		
J. G. Rice.....	10.00		
		128.47	
Borrowed from Echenique, Peña & Co. (for which we pay 1 % a month).....		1,253.94	
			$3,332.30

EXPENDITURES.

Paid C. H. Exall.....		21.44	
" Jas. Granger.....		27.98	
" house exp's beef, vegetable, and servants.....		23.62	
Mule % paid M. Abalos.....		3.97	
La Abra mine " memorias during month.....		86.71	
La Luz " " " " "		65.00	
El Arryan " " " " "		9.38	
Machinery and building " " "		49.56	
El Cristo mine " " "		11.72	
Mill % mozo to San Dimas.....	$1.00		
for making bags.....	.50		
A. Lechaya.....	6.88		
M. Contreras.....	1.50		
		9.88	

Statement of the cash receipts and expenditures, etc.—Continued.

76	John J. Skinker			$34.75
	Expense % trip to Mazatlan	$74.75		
	Postages	2.94		
	Belt lost containing	10.00		
			87.69	
	A. B. Elder			21.00
	R. Fonseca, pd bal'ce due for lime			70.75
	Mdse. % " mozo to Gill Osorio	1.50		
	" Miguel Vega for corn	20.21		
	" Ascensio Baron	56.25		
	" F. Romero for garoanas	10.69		
	" S. Manjares " hides	65.00		
	" for cutting guaraches	.62		
	" Gil Osorio for fr. from Mazatlan	100.00		
	" Harper & Co. for solder	3.75		
	" G. Koch & Co. " dry goods	328.00		
	" R. Sestier & Co., " "	14.23		
	" Redo Hernandez & Co., " "	299.08		
	" J. Heymann & Co., " "	12.75		
	" E. Neumann, " "	16.90		
	" J. R. Moller & Co., " "	34.04		
	" Behrendt & Co., " "	9.00		
	" A. F. Stockfleth for powder	10.59		
	" duties on goods from Mazatlan	79.66		
	" baker	15.00		
			1,075.27	
				1,598.72
	Bal'ce on hand in Tayoltita			1,733.58

Statement of the indebtedness of the hacienda de La Abra in Tayotita on 1st July, 1867.

1867.			
July 1.	There was due to employés as follows:		
	A. O. Sloan, miner	$486.25	
	A. B. Elder in charge of mill	181.01	
	John J. Skinker 2nd " " "	78.15	
	Wm. Carr, mason	217.90	
	Jas. Granger, bookkeeper	84.65	
	J. Carson, watchman	22.50	
			1,070.46
	C. Sandoval, for charcoal deliv'd		46.59
	Echenique, Pena & Co., for money borrowed (bearing int'st @ 12 % per ann.)	1,252.94	
	" " " bill mdse., 14 May due 14 Sept	264.38	
	" " " " " 6 June " 6 Octr	577.38	
			2,094.70
	Total		$3,211.75

HACIENDA LA ABRA, *July 13th*, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co., 18 *New street, N. Y.:*

DEAR SIR: The letters and papers sent by Sr. Molina were received at the hacienda on the 1st of the month. I had been advised by one of the members of the house of E. P. & Co. of the movements of Sr. M.; of his meeting with you, &c. Thinking that you would not let so good an opportunity escape to send letters out, I sent a mozo down to meet the steamer Colon (a small affair owned by Echequran & Co., which was sent over to Acapulco to meet str. from Panama, and bring Sr. M. to Mazatlan). Thus it was that I got your letters at such at an early date. As Col. de L. had arrived, and of course given you a minute and detailed ac't of affairs here, I can't say that the contents of your letter surprised me much. I am sorry that Col. de L.'s draft could not be paid, as its being protested I fear will injure the interests of the co. both in Mazatlan and San Francisco. All your previous letters to me were to follow out the instructions given to Col. de L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the
77 rainy season. Col. de L. left me with only moderate means to buy these various supplies; pay't of sundry bills which were coming due, and pay of the workmen

who had accounts of three, four, and six months' standing. (As I had the money in Mazatlan, deposited with E. P. & Co., and getting nothing for it, I settled up all time bills, getting a discount.) After these various amounts were considered, I saw that it was impossible to meet all obligations and have a sufficient surplus to keep me in operation during the rainy season, as it was absolutely necessary to have at the hacienda from —— to fifteen hundred dollars. Under these circumstances I drew on you through B'k of Cal. for $3,000. E. P. & Co., who have always bought Col. de L.'s drafts on you, did not want money on San F'co; I found it impossible to sell it to other houses, so sent it to Mr. Ralston, cashier B'k of Cal., with request to send me negotiable paper for ——. This paper I could, of course, easily dispose of anywhere. On the strength of this draft I bought my goods, my bill at E. P. & Co.'s amounting to $577.38, 4 mos. The other bills, amounting to $728.34, I bought for cash, which E. P. & Co. settled. In addition to this I borrowed $500 cash to take with me to the hacienda. Before leaving Mazatlan I made other purchases, making the whole amount which E. P. & Co. settled for me (including the $500 borrowed), $1,252.94 cash. This cash was lent and paid for me on my promise of payment by return steamer, which is the one now coming. I informed you by an early opportunity of my intention to draw. I had not then heard from you in reference to Col. de L.'s draft; did not know it had been protested, which, if I had known, I certainly would not have drawn. My draft will, of course, be returned by coming steamer. I wrote you fully when I was down last, informing you of my doings.

When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan, a small force in each. Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from ½ to — (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain, and a little spat with the officials which was gotten through without much trouble), I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by shares and by the cargo. I have succeeded in getting four miners to work by the cargo. They are working in the Arryan, and getting out some good metal. I hope to be able to keep them there; by doing so it will secure the mine in every way. Four miners is all I had there before. Mr. Cullins thinks that in a short time he will be able to get more men at work in the other mines. We can do better with them when they are a little hungry.

Working in this way is much better and attended with the least expense. They are provisioned for a week and charged with what they get. What metal they get out is assayed; if it assays an amount worth working (we pay them in goods a little money now and then), about ½ its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way (which they will not do unless they get good metal) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. If I am not able to get men in the other mines I am privileged by the mining laws of the country to stop working in mines 4 months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of the privilege.

Mr. Stone, who no doubt Col. de L. has spoken of, is now out of employment. He will remain here for a time. I can give him something to do now and then. I am sorry such is the case, as he is a good man in his position, and if the co. continues work it would be well to keep him. Mr. Carr, the mason, Dan'l Sullivan, both of which I have gotten rid of, in fact have reduced the force down to the lowest point.

SUNDAY 14.

Since the first of July I have been running the mill day and night, being thrown on my own resources and having no way to get money except from the metal.

The returns from the mill I will not be able to get for some days. I have had the mill cleaned up and everything in shape of metal put in vaso to be melted. In the morning I start for Durango with what bullion I may have. I should like to be able to give you results, but will not be able to do so, as the metal will not be out of the vaso before late at night. I start thus early for Durango, hoping to be able to get back in time to go to Mazatlan to meet steamer. What returns I get for the little silver I will turn over to E. P. and Co. I hope to be able to get along for a time at least without assistance, but if it can be gotten I would to know, for fear I will not be able to keep things with what little I have or may be able to get from the ore.

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The letter you seem so desirous for me to answer has not yet arrived. I expect it by next steamer; will answer it if I get down in time.

The rainy season has set in, although a very mild one so far; we had no rain of consequence until 3d or 4th of this month; the river is just high enough to notice it. Our dam holds good yet, but much of a rise in the river will sweep it away. The ditch at the upper end has been for some days overflowing; I fear before the season is through that it will be nearly destroyed, or at least rendered useless, until heavy repairs are made. It is a poor piece of work.

The officials are getting daily more troublesome; their demands are all foolish and very unjust, but we have to do the best we can with them and take things as quietly as possible.

Inclosed you have a full statement of the cash transactions; I had it made out as clearly as possible.

I have just gotten out of bed, having been confined to it nearly all day with severe attack of ague and fever; feel very weak. We have all been more or less sick this season; some one of us down nearly all the time.

I will send this down to M. to be mailed. If possible for me to get from Durango in time to go down to meet the steamer I will write you further.

Mr. Cullins joins me in best regards, etc.

Respectfully,

CHARLES H. EXALL.

HACIENDA LA ABRA, *July* 14, 1867.

J. G. RICE, ESQ.:

DEAR SIR: Your note (P. O. whenever he may be found) is just to hand, and I hasten to answer, as I wish to send a mozo to S. D. in time for him to return before night. There was one or two requests I wished to make in the note sent by Skinker, but he was in such a fidget to get off, hadn't the time.

Will you need the rubber overcoat you loaned me when last at San D.? If not, I should like to borrow it; otherwise I will send it over. Don't fail to send by mozo the rifle, with balls and powder-flask.

I expect and hope to be able to get off for Durango in the morning; have made arrangements accordingly. Your silver I, of course, will take charge of with pleasure, and transact any business you may desire, provided I can.

8½ a. m. and vaso built, but not sufficiently dry to commence operations. I will have to push things a little.

My intention is to return from Durango in to go to Mazatlan before the steamer leaves, but fear I may be miscalculating. I will go to M. at all events, steamer or no steamer. I will write my letters and send them down to E., P. & Co., with instructions to keep them until last moment before mailing. As I may get down before str. leaves I will send my letters down either by J. G. Rice, esq., or D. Juan Corrall, if I can be accommodated. Is there any one in Durango I can get who will or can give me value of bullion? What is paid for bullion at mint per marc? I feel very unwell this morning, hardly able to write.

Yours, truly,

CHARLES H. EXALL.

MAZATLAN, *August* 5, 1867.

D. J. GARTH, Esq.,
Treasurer of La Abra S. M. Co., 18 *New Street, New York:*

DEAR SIR: I am just in receipt of yours of 10 and 20 of May and 10 of June. I wrote you from Hacienda a day previous to my departure for Durango. I was the day before quite sick with chill and fever, and at the time of writing very unwell; fear my letter was very imperfect and unsatisfactory, which please excuse.

The trip to Durango consumed 11 days. The weather severe and roads rough. I enclose statement with remarks. When I returned from Durango I learned that the second day after my leaving the river had swollen to such an extent that it carried away a considerable portion of the dam, and a portion of the ditch adjoining the dam. Also, the immense rush of water down the arroyo had done considerable damage to ditch, overflowing it and washing a large quantity of dirt in it. This mishap occasioned the stoppage of the mill. The ditch was cleaned out, and as the water in the river was too high to do anything to the dam, had to get water from arroyo, which is sufficient to keep the mill in operation, and I hope it will last during the rainy season.

79 This occurrence kept the mill idle for 8 days. The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work then I know not. There is, of course, some little good ore in the great heaps on the patio,

but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will, at any, rate, do my best. I am now working 23 men by cargo; pay them not over $1 per week in cash. *I must* give them some little money. These are working in the Arryan and on the dump of the Roserio. The Cristo is now idle; also La Luz and Abra. I can get no metal from them which will pay.

The Cristo & La Luz, which have been worked for over a year, I am privileged to stop for 4 months. The Abra I must work; will put in some men; see what can be found. No further prorogues will be given, and although I have no fear of any one denouncing the mines, I must not leave unprotected. The ore which is now being gotten out will average pr. assays about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E., P. & Co., to settle money borrowed from them to buy goods; their bills will be due next month, and most of returns from present run will have to be paid then. I hope to be able to settle up all the indebtedness of the Co., both here and at the mines. E., P. & Co. are the only ones I am owing here. Col. De L.'s draft was presented me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last, was returned. Please inform me what can or will be done. I can't see very far ahead in money matters; can count on nothing positive from the ores now on hand. I leave to-morrow for the mines. All have been frequently quite sick. I manage to keep up better than the rest. Hoping that this and my last together will give you the information you require,

I remain, respectfully,

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. Co.

Statement of run of mill from 27 *May to* 13 *July, inclusive.*

Amount of rock crushed, 89 tons 1,676 lbs., producing 131 marcos 5 oz. refined silver, yielding at mint	$1,672.29	
Less mint exps	146.47	
		$1,525.82
Cost of chemicals	665.81	
labor	380.54	
wood, 95 varas, 62½	59.38	
		1,105.73
		420.09

During the above time the mill was stopped for 3 days to enlarge pulleys to settlers; by enlarging these pulleys, it gives greater rapidity and its working is greatly improved. Three days, from 10 to 13 July, were consumed in cleaning up. After 7th June there was not water enough to run both battery and pans (at this season, a month previous to the rainy season, the water in the river is very low), which, of course, reduces the capacity of the mill just one-half.

The mill works well—the battery particularly so. The great objection to the whole arrangement is its having been put too low down in the ground, thereby losing a fall of at least eight feet, which, if we had, would be of the greatest advantage, as we then could put sluices wherever they were needed; run the crushed ore to any part of the mill or patio. It would also enable us to save the tailings which we now lose.

The ore mentioned in statement above is from Cristo mine, which is of the lot Col. De Lagnel worked a little of. The assays which were made from samples taken from battery sluice, and which were made daily, vary in value; the greater number gave $13.50 per ton (silver); some others went $20, and again $22.50, but none over. The ore at the bottom of the pile seemed a little better than that on top.

I have worked none other than the Cristo ore, and lot; in this lot there is a little over saving the tailings, it will have and can be done (by going to a further expense). find ore which will justify saving the tailings. The ore I am at present working on does not yield sufficient to justify my going to the expense of saving the tailings.

I have built a much larger battery tank, which catches all that wastes from the battery, which before was to a great extent lost; this I work over. The oven, which has been completed, I have not yet used, as I have worked no metal which required roasting.

The boiler is a very indifferent one, very old style, and consumes a great amount of fuel, but answers its purpose.

80 The yield from the 89 tons in statement is small and the time great when we compare results, expenses, &c., but take into consideration that ore of ten times the value of this would require a no greater expenditure, no greater cost to

work, &c. I am at present working same ore; will send a like statement at the end of the run, or when the ore is exhausted.

CHARLES H. EXALL.

MAZATLAN, MO. *Aug.* 5, 1867.

Sor. D. MACARIO OLVERA,
Gefe Politico del partido de San Dimas:

DEAR SIR: I, this morning, received notification from Sor. D. Guadalupe Soto that it was necessary that I should present at your office in San Dimas, for your examination, the various titles of the mines owned by the La Abra S. M. Co. I hereby beg leave to inform you that the different titles required are at the office of the company in the city of New York, and if you deem it necessary I will write on for them by the earliest opportunity, or, as the titles are of course recorded in city of Durango, will, when I next visit that point (which will be in a few days), get a written statement to that effect.

Awaiting your commands in reference to what course I must pursue,
I remain, dear sir, your ob't s'v't,

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. Co.

TAYOLTITA, *Sept. 9th*, 1867.

MAZATLAN, MO., *Octr.* 6, 1867.

D. J. GARTH, Esqr.,
Treasurer La Abra S. M. Co., 18 *New Street, N. Y.:*

By this steamer I am in receipt of yours of 10 and 20 of July and 10 of Aug. I was much disappointed that my urgent demands for money was not favorably answered. I have complied with the requests in your various letters in reference to giving you exact information concerning affairs here. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand; that is now entirely exhausted. I have neith. money, stock, or credit. This latter I would not use even if I had it, as in this country it is an individual obligation and no co. affair. Now, you must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off debts of the concern. I have worked as economically as possible and have cut down expenses to the lowest point. Mr. Cullins speaks of leaving in a short time. Mr. Slone is still here, but doing nothing; he is awaiting news from the co., expecting that they may decide to run the tunnel, when he would be able to get employment.

If Mr. Cullins leaves I don't think that I will employ any one else. Mr. Slone I should like to retain, but as I am unable to give any guarantee for the payment of wages, fear to do so; am owing him and the others; these payments *must* be made. I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing.

The $5,000 draft of De Lagnel's was sent to a house in this place to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal, and I had much difficulty in warding it off. The concern to whom the draft was sent showed me his instructions and also the original draft. Fortunately for the co. there was a flaw in the draft; De Lagnel failed to sign his position as supt. La A. S. M. Co.; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property. I told them they could do nothing with the property here, as the comp'y were not obligated on the draft. I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz, on the patio, won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparas are not now granted, and mines are to be held only by working.

I am compelled to keep men in mines which yield nothing, merely to hold them. This I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected.

You ask for boundaries of mines, hacienda, &c. On this point I can give you no information, as these matters are, of course, to be found in the original titles, and I have no papers in reference to it. Recently the Government has ordered that all holders and workers of mines must present to the authorities the title deeds of said mines. The prefect in San Dimas sent for the titles of the La Abra Co.'s mines. I informed him that they were in New Y. He gave me four months to produce them. One month
81 of the time has passed. So you will please send immediately all the titles to the mines, or certified copies of them. They must be here in the specified time. By last steamer I sent you full statement of business of hacienda; the runnings; returns and expenses of the mill, % of ores, &c. I neglected to add 40 tons of tierras, which were run through and have been in statement sent, but was overlooked. I am sorry

not to be able to send you statements of the months since. On my return from Durango I stopped at the hacienda so short a time before starting for this point that it was impossible for me to make it up in time for this mail.

By next steamer will send you full statements of past months. The returns from Durango were small. I turned it over to E. P. & Co., as I was owing them. There is no difficulties about authorities, boundaries, or anything else concerning the mines & hacienda, provided there is money in hand, & *money must* be sent. I hope I have urged this point sufficiently so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money? I fear that before I can get a reply to this that something may have occurred. Of course, Col. De Lagnel informed you the conditions & terms on which I took charge of affairs here, which was the same that he was getting, & if I had known at the time what difficulties I was going to have in procuring means to keep the concern in motion, I would have refused on any terms.

I am much in need of money, as I wish to use it here. I will, in a month or so, draw on you through Wells, Fargo & Co., San Francisco, for $1,500—please inform me by earliest oppportunity that you will meet the draft.

My health is very bad & fear is much injured since being here. Another summer here I could not stand. Hope you will soon send some one to relieve me. Cullins & all the others have been or are now sick. The weather has been almost melting. Please have mailed the inclosed letters.

I hope that before this reaches you that some steps will have been taken to procure means to operate with. Trusting that you are in good health, I remain,

Respectfully,

CHARLES H. EXALL,
Act. Supt. La Abra S. M. Co.

Sor D. ANTONIO ARMIENTO,
Presidente de la Diputacion de Mondria del Distrito de San Ygnacio:

El que suscribe encargado de la negociacion Americana llamada La Abra S. M. Co. estando obligado á suspender los trabajos en algunos de las minas pertenecientes de la dich negociacion—hasta que puede recibir instrucciones de la compania relativo al modo de segurir los trabajos y fondos sufficientes para ello. Por estos razones pues pido con eldebido respecto que se digna V. concederme un amparo por el termino de seis meses sobre la mina de Arryan incluyendo en sus pertenencias las minas del "Sanz y Jalpa" todas pertenecientes á la referida compania y situados en el distrito de San Ygnacio, para que no sean denunciables por abandonados, protestando que pido justicia y no marla fe.

Esta escrito en papel comon por no haber aqui del sello que corresponde pero protesto reponerlo cuando haya.

Su atto. y S. S.

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. Co.

[Translation.]

Mr. ANTONIO ARMIENTO,
President of the Mining Deputation of the District of San Ignacio:

The undersigned, in charge of the American negotiation, entitled La Abra Silver Mining Company, being obliged to stop the works in some of the mines belonging to said negotiation till he can receive instructions from the co. concerning the way of resuming the works and the necessary funds therefor. For these reasons I ask you, with all due respect, to be pleased to grant me an *amparo* for six months on the mines Anyan, including those of the Sanz and Talpa, all belonging to the said co., and located in the district of San Ignacio, in order that they may not be denounced as abandoned. And I protest to make that request justly and not in bad faith.

Not having the necessary stamped paper, this petition was written in common paper, but I protest to replace it whenever I can.

Your attentive and sincere servant,

CHARLES H. EXALL,
Acting Superintendent of La Abra S. M. Co.

TAYOLTITA, *October 14th*, 1867.

Sor. D. ANTONIO ARMIENTO:

MUY SEÑOR MIO: Segun sus instrucciones de Vd. le acompaño el pediminto para el amparo de las minas de Arrayan, Sanz y Jalpa—cuales estan todas incluidas en las
82 mismas pertenencies; y al mismo tiempo le remito á V. seis pesos para los gastos del documento, incluyando en ellos el papel sellado que me hace V. el favor de poner para mi, pues no hay aqui del que corresponde.

Espero que V. me remitè el documento por la primera oportunidad ó á me en Tayoltita ó al ciudad del Sor. D. J. G. Rice en San Dimas.

Soy de Vd. en afmo. S. S., Q. B. S. M.,

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. Co.

TAYOLTITA, *Oct.* 11 *de* 1867.

[Translation.]

MR. ANTONIO ARMENTO:

SIR: In compliance with your instructions, I accompany you the petition for the "amparo" of the mines of Anayan, Sauz & Talpa, all of which are included in the same dependences, and I enclose you, at the same time, six dollars for the expenses of the document, including the stamped paper, on which you will do me the favor to write the petition, as there is none here of that kind.

I hope that you will send me the document by the first opportunity, either to me at Tayoltita or to the care of Mr. D. I. G. Rice, at San Dimas.

I am your affectionate and sincere servant,

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. Co.

TAYOLTITA, *October* 14*th*, 1867.

HACIENDA DE LA ABRA,
Tayoltita, 8*th Nov.*, 1867.

D. J. GARTH, Esq., *New York:*

DEAR SIR: I write you by this steamer to account for your not receiving any letters from Mr. Exall, in case he has not written you from Durango.

Mr. Exall left here on the 26th ulto. with bullion for Durango, in company with Mr. Sloan and two mozos, expecting to be back by 5th inst., but regret to say they have not returned, and we have a report that the party was met by a band of robbers before going into Durango and everything taken from them (silver, mules, arms, &c.), leaving them in their underclothing to make their way into the city, about half a day's journey. We do not give full credence, as yet, to this report, but am afraid, from Mr. Exall not returning or hearing from him, it is too true.

I am yours, very respectfully,

JAS. GRANGER.

MAZATLAN, *Nov.* 17, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co.:

DEAR SIR: Yours of the 30th Sept'r is just in hand, and contrary to my expectations, contains nothing of an encouraging nature. I expected, after having previously written so positively on reference to the critical state of affairs with me, that you would have sent me by *this mail* some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th inst.—since my leaving Tayoltita—(I left there on the 10th for this point), intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of the next steamer (don't know as yet if I will succeed in getting him to delay), when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once. Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men which are now at work in them. This I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement.

In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Mr. Elder, Slone, & Cullins, if paid off will sail for San Francisco; if not paid off, suit will be commenced, & as I have no means to defend the case, fear it will go against me. When these parties leave,
83 the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, who I am also owing, and I away much of the time.

What you intend doing must be done promptly. Please send me Mr. Cullins' contract with you. The political state of the country just now is rather discouraging. I hope by the time this reaches you, will have rec'd statement sent. Everything at

mines is as it was when I last wrote, only more gloomy in appearance on ac't of not being able to employ the people & put things in operation. *Please do something immediately*, and inform me as speedily as possible.

Yours, most resp'tf'y,

CHARLES H. EXALL,
Act'g Supt. La Abra S. M. C.

Please forward inclosed letters.

MAZATLAN, M'o, *Dec.* 18, 1867.

D. J. GARTH, Esq.:

DEAR SIR: I arrived here a few days since. Received by steamer yours of Oct. 10, informing me of your inability to send me the means to operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me, and begged that you would do something. Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money.

Mr. Cullins, who I informed you in a former letter would leave, insisted upon doing so by this steamer. He demands a settlement, otherwise he will immediately commence suit, and had made preparations to do so. To keep the matter from the courts I was compelled to borrow money to pay him off. The balance due him, and the amount I had to borrow here, was $1,492. He has troubled me a great deal—has been exceedingly unreasonable. On yesterday, the agt. of the B'k of Cal. informed me that he rec'd the draft by the last steamer (which arrived a few days ago), and would immediately commence legal proceedings, and sent the draft on to the courts here.

I am utterly unable to oppose them; first, I have no means, and, again, I am not your agent here, never having received a power of atty. from you, which will be necessary, for I can not act in these courts without it.

The Bank of Cal. —— and will do something to recover the amount of the draft before the amount is doubled by the expenses. For God's sake telegraph to and pay them. Matters of this nature once getting in these courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything there. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter pay them before things go further. My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly, and consider my circumstances, and believe I am doing the best for your interests.

I am doing nothing at the mines, and have only one person left with me. Please attend to this matter promptly. I am writing very hurriedly as there is a war steamer just leaving for S. Francisco which will arrive there some days prior to the regular mail. I leave for the mines in a few hours. Attend to this at once and telegraph me.

I remain, your obt. svt.,

CHARLES H. EXALL.

C. Gefe Politico del Partido:

Por el presente pago formal oposicion al denuncio hecha por el C. Guadalupe Soto fecha Oct. 28 de 1867 de una sita de la hacienda antigara llamaba "Guadalupe" en el mineral de Tayoltita; siendo dicho terreno la propriedad de la compañia Americana que represento yo, y quien la adquirio per comprada del Sor. D. Angel Costillo de Valle en ultimo posedor, y estando actualmento ocupado por dicha compañia en las necesarias operaciones de su hacienda de beneficio. El torreno en cuestion forma una parte tel terrene comprado por el uso esclusive de la referida compañia quien quiarindo usalo para otros objetos, han utilisado por medio de una maquinaria muy costesa el agua del rio en un modo mucho eficas que antes, con facilidades abundantes para beneficiar todos los metales que se sacan en el mineral de Tayoltita. De modo que seria una injusticia á la compañia de quitarle esta parte de su terreno. Ademas, hay una habitacion occupado en el mismo terrene y por esta razon esta denunciable seno con aviso de cuatro meses, para restablecer, vender ó arrendarlo, en caso que las razones ya es
84 puestos no son sufficientes pare su completa ampara. Por tanto pido que se admite esta mi oposicion y que se anule el referido denuncio—decidiendo la cuestion lo mas pronto posible—protestando ser en justicia y no de malicia. Se suplice tambien el presente en papel commun por no haber de sello que corresponde, protestando, reponerlo cuando haya.

CHARLES H. EXALL,
Admor. La Abra S. M. Co.

SAN DIMAS, *November* 26, 1867.

[Translation.]

CITIZEN PREFECT OF THE DISTRICT:

Herewith I make formal opposition to the denouncement made by C. Guadalupe Soto on the 26th of October, 1867, of the site of the old hacienday called Guadalupe, in the mineral of Tayoltita; said grounds being the property of the American company which I represent, and which acquired them by purchase from Señor Don Angel Castillo del Valle, their last owner, and being now occupied by said company in the necessary operations of its reduction works. The grounds in question form part of those purchased for the exclusive use of the company referred to, which, desiring to use them for other purposes, has utilized, by means of expensive machinery, the water of the river in a manner much more efficacious than hitherto, with abundant facilities to beneficiate all the metals which may be mined in the mineral of Tayoltita. It would therefore be a great injustice to the company to take from it this portion of its property. Moreover, there is an occupied house on the same ground, and for this reason it is not subject to denouncement without four months' notice to repair, sell, or rent the same, should the reasons which I have given not be sufficient for the complete protection of the company. I therefore beg that you will consider this my opposition, and annul the denouncement referred to, deciding the question as promptly as possible, protesting in justice and not in malice. This is written on common paper, because I have not necessary paper, but will replace it when I have some.

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

SAN DIMAS, *November* 28, 1867.

Sor. D. MACARIO OLVERAS,
Gefe Politico, del partido de San Dimas:

DEAR SIR: I was in San Dimas on yesterday and hoped to have the pleasure of seeing you, but was disappointed, as you had not returned, and learned that you were not expected until 23 inst.; thought best to write you in regard to the denouncement of the hacienda Guadalupe by Sor. D. Guadalupe Soto, altho' I should have much preferred to have talked over the matter with you.

On last Saturday D. Guadalupe put men to work on the hacienda grounds; this I was confident he had no right to do until decision was given in his favor, on his denouncement, and he was legally put in possession. Accordingly I laid my complaint before the judge here (D. Nicanor Perez) who decided that Soto must suspend work, but afterwards I learned that he told Soto to go and work, which he did and has since continued working. This should and ought not to be. The judge says that he has heard nothing from you in reference to the matter, and nothing in reference to my opposition. Sor. D. Antoariza, gefe municipal, here on yesterday; he is an old resident of this section of the State and neighborhood, knowing intimately the former owners here, and also knowing everything in reference to the sale of the property—the two haciendas and mines. He gives it as his *opinion* that the hacienda is not denounceable, and that Soto should be ordered to stop work until the affair is settled.

Soto contends that he works by authority of an order received from you. This I was very much surprised to hear, as by the mining laws four months from the date of denouncement is given the owner, in which he may re-establish, rent, or sell, and knowing your knowledge of the laws, can not think you could have issued such an order.

Although I have no personal interest in this matter—being placed here by the company in charge of the mines haciendas—I can not allow any of them to be taken without using every lawful means in my power to retain possession of them. And in this business I demand equal and exact justice, without fear or favor, and leave the matter in your hands, with the request that you will protect me in all my legal rights and privileges.

Trusting that you will take proper and speedy steps to arrest this matter, I remain,
Your ob't s'v't,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

TAYOLTITA, *December 5th*, 1867.

S. D. RAMON GURROLA,
Hacienda Santa Ana:

MUY SEÑOR MIO: Recibi su grata de Vd. y de Dn. José Rice con fecha del 9 de Diere. y mando con el arriero Emeterio Camilo— 3 frascos de Azoque que son por todos 450 libras.

Sin mas para ahora soy de Vd. su aff. y S S.

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

TAYOLTITA, *Diere.* 10 *de* 1867.

[Translation.]

253 Mr. RAMON GURROLA,
Hacienda Santa Ana:

SIR: I received your favor and that of Joseph Rice, dated on the 9th of December, and I send with the muleteer, Emeterio Camilo, 6 flasks of quicksilver, weighing altogether 450 lbs.

Without any more for the present, I am your affectionate and sincere servant,

CHARLES H. EXALL,
Administrator La Abra S. M. Co.

TAYOLTITA, *December* 10, 1867.

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34 Sor. Dn. JUAN CASTILLO DE VALLE:

DEAR SIR: I take the opportunity of our mutual friend, J. G. Rice, esq., going to Durango, to write you again in case my letter of 26th Novr. should not have reached you.

In mine of 26th ulto., I wrote stating that Guadalupe Soto had denounced the hacienda de beneficio de Guadalupe on the false grounds of abandonment. At the time of the denouncement I had gone to Mazatlan on business. As soon as I returned, and heard of what had been done during my absence, I entered a formal opposition, and put it in the hands of the gefe in San Dimas (our head of legal affairs). I understand he has since forwarded it to the governor for his decision thereon. In regard to the grounds of denunciation which he took, that of abandonment, "it is false."

85 It is true we have not used the hacienda for *all* the operations of beneficiating metal, but use it in connection with our beneficiating works of the hacienda San Nicolas. Over the hacienda, or rather a portion of it, there is a roof in good repair, and in this part of the building there has always (and is now) been some one of the employés living.

From appearances I think the authorities are in favor of Dn. Guadalupe (or have in some way committed themselves) and if possible will give him possession, which, if done, will be doing my company *great* injustice, and going contrary to the laws of country.

The reason of the statement given above in reference to committal, is he, Soto, seems so confident of success, and in addition has a force at work daily. You know the great injury the putting up of tahonas by the above-named party would do my company, as of course, all the metal from this company's mines, and all the surrounding mines, would be stolen and taken to him, and in fact there are many other ways in which my company would suffer if he succeeds in getting possession.

Not having the titles, and not knowing whether the hacienda Guadalupe was included in the pertenences of the hacienda San Nicolas, when you sold the property to my company, or whether they were sold separately—as two haciendas—I write, begging that you will give me all necessary information on this subject, and if you can in any possible way do anything with the authorities to induce them to render a decision in favor of my company, and prevent possession being given to Guadalupe Soto, you will be doing my company *great* service, and receive the thanks of

Your ob't serv't,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

TAYOLTITA, *December* 5, 1867.

Sr. Dn. MIGUEL LARENGA:

MUY SR. MIO Y AMIGO: He recibido su carta de V. fecha de ayer, y la de los Sres. Stozel, Bartwing & Co., y siendo mi intencion de venir por aca he deferido de escribir hasta llegar aqui.

Siento mucho que los Sres. Stozel, Bartwing y Cia. entendieron mal lo que les dije respeto ńeste negocio y le han molestado á V. otra vez con el.

Dentro tres o cuatro dias espero salir para Mazatlan cuando les vere á dichos Señores y creo poder arreglar el asunto ellos satisfactoriamente.

Soy de V. afma S. S.

CHARLES H. EXALL,
Adm'or La Abra S. M. Co.

SAN DIMAS, *Enero* 12 *de* 1868

[Translation.]

253 Señor DON MIGUEL LARENGA:

DEAR SIR AND FRIEND: I have received your letter dated yesterday and that of Messrs. Storzel, Bartning & Co., and as I intended to come here I have deferred my answer until my arrival.

I am very sorry that Messrs. Storzel, Bartning & Co. misunderstood what I said to them respecting this matter, and have again troubled you with it. Within three or four days I hope to set out for Mazatlan, when I shall see those gentlemen, and I believe I can arrange the matter satisfactorily with them.

I am, your most affectionate servant,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

SAN DIMAS, *January* 12, 1868.

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85 SAN DIMAS, *Durango, Mex., Dec.* 25, 1867.

This day received of Sr. D. Miguel Larenga, a draft of five thousand doll's ($5,000), drawn by J. A. de Lagnel on D. J. Garth, esq., New York.

Not being in any manner connected with or responsible for said draft of $5,000, I refuse to recognize it.

Respectfully,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

C. JEFE POLÍTICO, *San Dimas, Durango:*

DEAR SIR: This morning about 11 o'c'k Sr. D. Gicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then walked into the store-room adjoining the store, the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, in as polite Spanish as I was master of, requested him to come out, and after he came out I shut the store-room door. He then asked me if I thought he was a rogue and wanted to steal. I told him as well as I could, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business, and wanted to see Matias (our ——) who was at the time working in the storeroom. I immediately called Matias out, and he and the ——— then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to ———.

At about 12½ o'ck, just as our dinner-bell had rung, a mozo brought an order from the judge, which I inclose. After we had eaten, Mr. Slone went up to see the judge.

86 He had collected around his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his room, I requested Mr. Slone to ask him, as I was unable to ask him myself, what was the business he wanted to see me on. He replied he had been grossly insulted, and pushed out of the store, when he was on official business. This I of course denied in a most emphatic manner, having acted only as before stated. I then told him that in requesting him to come out of the store-room I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting any one to go in the store-room without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, and, from my ignorance of the language, *could* not argue the point. After some time spent in talking to this effect, I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good by. As we reached the corridor, he said he never wanted to see me in his house, except on official business. To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would send a force after me, and they would shoot, and insisted on my return into the house. I did so, without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from Sn. Dimas, and would listen to nothing that I might say. After being his prisoner for an hour, not being allowed to speak to any one, and being guarded, I asked if he intended putting me in jail please to do so, as I had a headache, and wished to lie down. He then gave me permission to go to the hacienda, *but* to consider myself still his prisoner, and at his house whenever ordered.

My dear sir, I have before given you as minute a state of events exactly as they occurred as 'tis possible to write, and from which you will see that if I have given any cause to Dn. Nicanor to imagine himself insulted, it was done ignorantly, as

nothing was further from my thoughts than insulting him or hurting his feelings in any manner, and I submit it to your judgment whether I deserved the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me. But for being a prisoner, I would come and see you in reference to the matter, but unfortunately necessity compels me to write.

Dn. Nicanor intends writing to San Dimas, and will of course give his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible.

Yours, most respectfully,

CHARLES H. EXALL,
Adm'r La S. M. Co.

TAYOLTITA, *Jan'y* 7, 1868.

MAZATLAN, *Jan'y* 24, 1868.

D. J. GARTH, Esq.,
Treaurer La Abra S. M. Co.:

DEAR SIR: I came down to meet steamer from San Francisco, in hopes of receiving letters from you; I received none, and now, being entirely out of funds and stock, and being sued by ag'ts from B'k of California for the payment, have to let things take their own course, as I am unable longer to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and will simply state that I am doing nothing whatever at the mines, and can not until I receive money to operate with I havn't means to protest now and they are liable to be denounced at any moment. Some months since I wrote you for titles; the Government demanded them; they have not been received.

By December steamer I sent you a telegram from San Francisco; no reply. The parties I sent the dispatch to in S. F'co sent it on to New York. I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco, will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of Cal. from getting possession; thus far have succeeded, but can prevent them no longer, and fear they will eventually have their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer.

I have only one man with me now; am compelled to keep some one. Please
87 telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in N. Y. and sent to me whether or not I may have left. Please let me know your intentions.

Respectfully,

CHARLES H. EXALL.

Please forward inclosed letters.

TAYOLTITA, *Feb'y 26*, 1868.

Mr. JAMES GRANGER:

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course, acting in all your transactions with an eye to the interests of the company.

This will, to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

TAYOLTITA, 12 *de Agosto de* 1868.

Sor. D. REMIGO ROCHA:

MUY SEÑOR MIO: El cobro que se me hace, de $52.50, que la corresponde pagar cada mes á esta negociacion por las contribuciones impuestas por la Legislatura del Estado la ha reconocido y la jusgo justo, pero como yo soy unicamente un encargado por estar fuera del lugar el Superindente, y como no hay existencia de dirmo ni de efectos para poder pagar este impuesto. Suplico á V. se sirva esperarme hasta el mes de Noviembre que es cuando debe de venir dicha Superte. y entonces seran pagados las cantidades á que deba este negocio por esta contribucion.

Su afmo S. S. Q. B. S. M.

SANTIAGO GRANGER.

[Trans'ation.]

253 TAYOLTITA, *August* 12, 1868.

Señor DON REMIGIO ROCHA:

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct; but as I am only acting in the absence of the superintendent, and as there is no money nor effects to pay this tax, I beg you to wait until the month of November, at which time said superintendent is to come, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

SANTIAGO GRANGER.

EXHIBIT B.—J. A. LAGNEL.

Attest as in Exhibit B, referred to in the deposition.

L. S. B. SAWYER,
Comr., &c.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, May 10th*, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico:

DEAR SIR: Our last dates from Mexico on 5th Feb'y last, when we had a letter from Col. De Lagnel, at Mazatlan, informing us that some delay had been met with in getting the water on the wheel, and consequently in getting efficiently at work in washing the ore, but that it was not serious and he hoped in a few days to have everything all right, and gave us some ground to hope for good results now very soon. From a letter rec'd by Mrs. De L. we expected that the col. would have reached here before this time, as it was thought that he would leave Mazatlan about 10th March last, and we have been awaiting further advices with much anxiety and interest. We now expect by the next steamer, now nearly due, to see Col. De Lagnel or to hear something further from him or you. In our former letters we stated that in the event of his leaving Mexico we supposed that you would take charge of affairs, since when we have given no further instructions on this point. Touching the management we have so fully given our ideas in former communications that we now have nothing more to add. We trust the dead expenses of building and machinery and preparation for work have now been long since completed and that a large amount of good ores accumulated ready for work, and that before this time have been beneficiated and the results proved to be satisfactory. I hope arrangements can be made to export the bullion, as it would be greatly to our interest to do so, instead of having to be compelled to have it coined, and so avoid loss and delay at the mints in Mexico. The affairs of the company here are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any further aid from here, and look anxiously to be reimbursed very so on, from the products of the mine, and it is hoped that your best energies will be exerted to afford relief. We learn that the Guadalupe Co. intend to erect a steam stamp mill and that they have made further assessments for this purpose. We have replied protesting against it and refusing to pay, under the circumstances, as we are now informed even if we had the money we should not pay any further assessments to this company. When you write next give us full accounts and your views of this matter. We wish you also to write us very fully each month, and also to furnish us with detailed monthly report and accounts of your operations, &c. I wrote you in regard to the Gusrisamey property and authorized you to sell my interest in it if possible, and hope you will be able to do so.

Do write as fully all about what you are doing and of the prospects of the mines, &c.

Yours, truly,

D. J. GARTH, *Tr.*

EXHIBIT C.—J. A. DE LAGNEL.

Attest as Exhibit C, referred to in the deposition.

L. A. B. SAWYER,
Com'r, &c.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 20, 1867.

MR. CHAS. H. EXALL, *Tayoltita, Mexico:*

DEAR SIR: I wrote as usual by the last steamer, which left here on the 11th inst. You will see that Col. De Lagnel was expected by the steamer then about due, but

he failed to come, and we are yet without any advices from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete, and that we might soon look for good results from the enterprise, but that the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last, and was paid by one of the directors of the company, as it was considered that was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin, when the last steamer arrived, instead of bringing Col. De L. with some fruits of our works, a draft for $5,000 gold, was presented for payment by Lees & Waller, drawn by De Lagnel, favor Bank California, and dated 10th April last, and of which we had not received any notice or advice whatever, and have not yet received any. As I had so often and fully advised the superintendent of the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the company will have to be sold out and reorganized. I must again urge you to use all possible dispatch in remitting us bullion, and use the greatest possible economy in working. We wish you to give us very full and particular accounts of amount of ore on hand and amount you raise daily; the number of hands employed, cost, &c., and amount crushed, yield, &c., and the cost of beneficiating, and also a regular monthly statement of receipts and expenses. In this we earnestly insist on, and hope you will not fail to do it. I expect Col. de Lagnel now daily.

With best regards, I remain, very truly yours,

D. J. GARTH, *Tr.*

(Indorsed:) "D. J. Garth, May 20, '67, to C. H. E."

EXHIBIT D.—J. A. DE LAGNEL.

Attest as Exhibit D, referred to in the deposition.

L. A. B. SAWYER, *Com'r, &c.*

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 30, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico:

DEAR SIR: We wrote you on the 20th inst., informing you that we had nothing from you or Col. de Lagnel, but that a draft drawn by Col. de L. from Mazatlan, 10th April last, had been presented, and their being no funds on hand, and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter Col. de Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. de Lagnel expected that Mr. Sundel, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver; if, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. In regard to the working of the ore, I would advise that you don't waste it by running it through the mill when you find that the yield is not satisfactory. I would suggest that you run, say, 2 to 3 tons of metal through the mill and see what the results are by the pan process, and then take a like amount of same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working. All expenses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible—at any rate, no further aid can be rendered from here, and what you need must come from the resources you now have. Neither must you run into debt; cut down expenses to amount you can realize from the mines. I can not yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done

to pay off the debts here, now pressing on the company. For the present, all I can say is that the whole matter is with you; take care of the interests and property of the company; don't get it involved in debt, and advise us fully of what you are doing. Everything here excessively depressed and dull. With best regards to Mr. Cullins and yourself,

I am, very truly, yours,

D. J. GARTH.

You must be very careful in regard to the tailings or "pulvios," and try and save them, and not let anything be wasted, for "future use."

[Endorsed—"David J. Garth. To C. H. Exall. May 30, '67."]

EXHIBIT E.—J. A. DE LAGNEL.

Attest as Exhibit E, referred to in the deposition.

L. A. B. SAWYER.
Com'r, &c.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, June* 10, 1867.

MR. CHAS. H. EXALL,
Tayoltita, Mexico:

DEAR SIR: I had this pleasure on the 30th ult., sending the letter by a gentleman going direct to Mazatlan. We have not heard from you since Col. de Lagnel left Mexico, but hope that you are well and getting along as well as could be expected. The account that Col. de L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes. We trust, however, that a fuller examination will show better results. We have in previous letters to you and to de Lagnel so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject. There is no money in the treasury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by de L., on 10th April, was returned protested, and I hope you will be able to take it up when it gets back, promptly. Everything now depends upon you and to your judgment, energy, prudence, and good management of the resources in your hands, and we hope you will be able to command success.

Very respectfully and truly yours,

D. J. GARTH, *Tr.*

(Endorsed:) "D. J. Garth to C. H. E.," June 10, '67.

EXHIBIT F.—J. A. DE LAGNEL.

Attest as Exhibit F, referred to in the deposition.

L. A. B. SAWYER,
Com'r, &c.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, July 10, 1867.*
(Care Echenique, Pena & Co., Mazatlan).

MR. CHAS. H. EXALL, *Tayoltita, Mexico:*

DEAR SIR: I had this pleasure on 30th May and 10th June last, after the return of Colonel de Lagnel, and we had learned something of the condition of affairs in Mexico. In these, as well as in preceding letters, you were fully advised of the condition of the company here; that there had been no funds in the treasury for a long time; that appeals had been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the company were anxious for its return, and refused to make any further payments; and that the draft for $5,000 drawn on me as treasurer by Colonel de Lagnel, on the 10th April last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that by that time you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. We have since received your letters of the 6th May, from the mines, and 17th May, from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. I am glad to hear that you

are taking out *rich* metal and hope it will turn out *valuable*. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, as well as the old Mexican miners, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the hacienda there must be a considerable am'nt of rich metal, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course you keep an accurate account of the cost, not only of raising and transporting the ore to the mill, but of the cost of crushing it and converting into coin or bullion; and, as it is a matter of simple calculation, you can soon see if it will pay or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point, and wish you to give careful attention to it, and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, am't of ore raised and its value, and the results after beneficiating, etc. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view.

Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.

We wish you also to ascertain and fix definitely the extent and boundaries of our properties, mines, hacienda, &c., &c., and to send us a copy of same. I suppose Costillo has furnished such an one; or if not, that he will do so. Please attend to this, as it may become important some time or other.

* * * We hope the next advices from you will be favorable, and to learn that you will soon send us plenty of money to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as to yourself, I remain y'rs truly,

D. J. GARTH, *Tr.*

(Endorsed:) "David J. Garth, July 10, '67." "To C. H. E."

EXHIBIT G.—J. A. DE LAGNEL.

Attest as Exhibit G, referred to in the deposition.

L. S. B. SAWYER,
Com'r, &c.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, July 20th,* 1867.

MR. CHAS. H. EXALL,
Tayoltita, Mexico:

DIR SIR: The steamer is just starting, and I have only time to say that your letter of the 11th, by private hand, has been rec'd, advising us that you had drawn on me for $3,000 gold. In former letters you will have learned the condition of things here, and that there is no money to pay same, and that former dr'ft of de Lagnel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so. I have no time to-day to write more, but hope you are getting on well; will write you fully as requested. I enclose several letters from y'r friend. Y'rs truly,

D. J. GARTH, *Tr.*

(Endorsed:) "David J. Garth, July 20, 1867."

EXHIBIT H.—J. A. DE LAGNEL.

Attest as Exhibit H, referred to in the deposition.

L. S. B. SAWYER,
Com'r, &c.

NEW YORK, 10 *August*, 1867.

CHAS. H. EXALL,
Tayoltita, Mexico:

DEAR SIR: I wrote you briefly on 20th ulto., and since have your favor of 11th June from Mazatlan. Your letter by private hand had reached me some time previously. We observe with deep regret and disappointment that you were making but little progress in beneficiating the ores now on "patio," and that the yield had not improved. This is a severe blow to the enterprise, as we had expected long before this time that you would not only be in position to sustain yourself, but to remit us enough to pay off the large indebtedness here. We learn with deep regret that you are likely to become embarrassed in getting supplies for the rainy season. Long before this reaches you, it will be seen that the draft of de Lagnel, drawn for $5,000, was protested and returned to Mexico, and that you must try and pay it, and it is well that you did succeed in negotiating the draft for $3,000 you proposed, as we could not have paid it, and you must manage to get along with what resources you have, as we can not give you any aid from here. I would advise you to try and beneficiate what ore you have on hand, if it will pay to do so, and to cut down expenses to the lowest point, merely taking care of the interest and property of the company as best you can until further instructed, and in mean time give us complete account of expenses, debts, and full balance sheet of your books to latest period, and also give us your opinion in full of the prospects of the mines, values of the ores, cost of raising and working, with yield of same as requested in former letters. From the reports we get in the papers, we find that Americans and all foreigners will not be protected in their persons and rights in that country, and that we may have to abandon our property there. If so, you must take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government. Mr. Rice no doubt will be of essential service to you in any measure of this sort, and we would advise you to consult freely with him. The directors of our company are trying to reorganize and to raise money to pay off the debts, and to prosecute the work anew if possible, but I am constrained to say with but little hope of success. Meantime, you must get out all the means you can from the ores, cut down all expenses, keep out of debt, and do what you can to protect and preserve the property of the company.

Very truly,

D. J. GARTH, *Tr.*

EXHIBIT I.—J. A. DE LAGNEL.

Attest as Exhibit I, referred to in the deposition.

L. S. B. SAWYER,
Com. P. C.

NEW YORK, *Oct.* 10, 1867.

Mr. CHAS. H. EXALL,
Tayoltita, Mexico:

DEAR SIR: Since ours of 30th Sept'r, we have yours of 5th August from Mazatlan Note contents. We are deeply pained to find that you are not well, and that, and are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of Cal. has again sent Col. D. Lagnel's draft here for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it.

Very truly, yours,

D. J. GARTH, *Treas'r.*

I enclose letter from your friend.

(Five letters from the superintendent of the La Abra Silver Mining Co., to his clerk, from March 15th to July 18th, 1868, after the alleged abandonment of the mines.)

MAZATLAN, *March 15th*, 1868.

DEAR GRANGER: I wrote you by Rice, and said everything I thought necessary. Since writing something else has transpired, which I think it best to post you on. On yesterday Bartning and I had another conversation in reference to the draft matter, but I gave him no satisfaction in the affair. He seemed particularly anxious for

me to acknowledge the debt, and that the money had been used for the benefit of the co. His object in this is plain. He wants to get some hold on the co. which he has not now. I told him I would consult with Rolston in the matter, but of course Mr. R. will get nothing more from me than Mr B.

In reference to the La Abra affairs, I think we will have to look to this country. The property can not be sold without legal authority from the co. This I think I can get. Am induced to believe so by the co. letters rec. In fact, it would be difficult to get a purchaser without authority to sell. I am certain of being able to get some power from them, so as to enable us to secure ourselves. I will communicate with co. from San Francisco, and, if best, will go on immediately to N. Y. and return as soon as possible. Please keep everything in the best possible shape and secure, and by no means let my books be seen or known. It is to the interest of us both to do so; therefore I krow you will act as I advise in the matter. I have been quite sick since being here, and at one time was afraid wouldn't be able to go up. Am now much better, and hope to be off to-morrow. The line is so arranged now that you can get from N. Y. to Mazatlan in 20 days, so I will not be gone very long. Please act prudently in this matter, and in a few months I think I will be able to put us both right. *Be sure and write me by next steamer* to San Francisco. I will make arrangements in San Francisco or elsewhere. Direct care of Weil & Co. You will get their number from the books. Hoping that you may get along all right, and that I will be soon again with you with means to satisfy ourselves,

I remain, your friend,

CHARLES H. EXALL.

SAN FRANCISCO, *April 7, 1868.*

DEAR GRANGER: After a rather pleasant voyage of 8 days we arrived at this point. The change in the climate did at first play the devil with me, but that soon passed off, leaving me in glorious condition, which has continued up to present moment—so much for health. Since being here I have seen Ralston of B'k of Cal.; he and I had long consultation, which resulted, in his opinion, that the affair had best be prosecuted in N. Y. I wrote you from M. in reference to my conversation with the German house in that place. Elder I have not seen, he and Belshaw having gone in the mining region to look after some mines. Cullins I saw once passing through the reading room of the hotel where I stop, Am. Exchange. I did not speak to him; don't think he saw me. I have determined to go on East; think it best I should do so, as the affairs of the co. can and must be decided at once, and I can, from N. Y., get to M. in 20 days; so you see this is the speediest way to settle the thing. For God's sake keep everything in as good shape as possible, and in event we have to fall back on the property, it will be in such condition that we may be able to realize something from it. It is hardly necessary to give any further instructions as I have previously written all that I could on the subject, and, you knowing as well as myself, must be guided by your judgment. I will sail on the 4th or 5 by way of Nicaragua—steamer on this side, Moses Taylor; Atlantic side, Guiding Star. May probably have a rough time. I have been considerably bored since being here, and wish to get off as soon as possible. I will either come on back immediately from N. Y. or write. Emigration is overrunning Cal.; hundreds of people here with nothing to do.

Trusting that you may get along, at least comfortably, and that our affairs may soon be settled to our satisfaction,

I remain, yours, truly,

CHARLES H. EXALL.

NEW YORK, *May 8th, 1868.*

DEAR GRANGER: Yours from Tayoltita of March 25 reached me day before yesterday. Was much pleased to hear from you and to know that you were getting along in some shape. I wrote you from San Francisco just previous to sailing from this point, giving you a statement of my doings while there; so no need of repetition. As I stated in my letter to you, I came by the Opposition route across the isthmus—Walker's old ground—and while crossing it I can safely say I had the damn'est roughest time imaginable. It was awful low water in the small streams or rivers; heavy rains while on the journey; in water, pushing flats, &c., &c. It was an indescribable mean and rough trip. We were four days getting across; got pretty good sea steamer on this side; 27 days from San Francisco to N. Y. Of course, on the first day of my arrival here, I saw nothing of the company. The day after I went down and saw Garth. Had a long talk concerning affairs, and, contrary to our expectations, gave me no satisfaction; didn't seem to intend to do anything more. I have seen

him several times, but have got nothing from him of an encouraging nature. He seems disgusted with the enterprise, and, so far as regards himself, intends to do nothing more, or have nothing more to do with it. Well, I then went to one of the stockholders and directors, who talked a little better. It seems there is a party here who has been after Garth, and this stockholder mentioned to sell the mines to a wealthy party who are now successfully mining in California. This party have been after this gentleman repeatedly, endeavoring to get them to sell the mines, &c., they bearing all expense and giving the present company so much stock. This party are not now in New York. One of them has gone to hunt up De Lagnel to get all possible information concerning Tayoltita, &c. In addition the party will pay up all debts against the company. From what this director tells me, they seem in earnest. They are not aware of my arrival; have been written to informing them of the fact, and I will probably be brought in contact with them before long. Now, as you and I are the principal creditors—I haven't been able to get a cent from them—"the company"—and the thing being in my hands, if this party intended buying, we can and will make a good thing out of it. Those of the company I have seen have turned the affairs over to me; so, in case anything can be done with this party, don't be afraid of your interests—all accounts at the mines are under my control—as yours will be looked to in conjunction with mine. All now depends in what can be done with this party, and more information concerning it I am unable to give until seeing them. I have informed the company that they shall do nothing until you and I were paid, which seemed satisfactory.

This will be mailed by steamer of 11th inst. If you do not hear from me by steamer of 21st, it will be on account of affairs not having been concluded. You may certainly expect a letter by mail of 1st June; hope, previous to that time, that I may have made satisfactory arrangements, &c. Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen I will represent things in a secure state; if possible, get prorogas on mines where times are expiring; keep them secure, if possible, in some way; don't be uneasy or spend a thought on Cullins or B'k of Cal.; find out in a quiet way when and where you may dispose of the remaining property, but do not sell until you hear again from me. I hope to be able to make something for ourselves out of this thing—at present we are in the dark, but I will soon know something definite and will immediately write you. In case this party should purchase I will accompany them to the mines. You can extend Ariza's "Guarismey" privilege "if he wants it" another 3, 4, or 6 mos.; don't extend Guadalupe's more than a month at a time; do the best you can under the circumstances, using your own judgment, being guided to an extent by what I have written.

I am also sorry I sold Green Nelly; I think he is a damn rascal, and his company a fizzle. Get the mule, saddle, and bridle and cloths from Green. If the co. owe you anything make them pay. Green's draft was refused in Frisco and here. I inclose a note to him from the man the draft was drawn on, also one from myself.

I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable. I expected to be paid up here; its not having been done plays the devil with my arrangements. Since my arrival here the weather has been exceedingly unpleasant; raining nearly all the time. N. Y. is exceedingly dull; business much depressed; the political state of affairs of course has everything to do with it. Johnson is not yet impeached, and heavy odds are bet in Washington against the impeachment. Many changes have taken place since I was here last. Old friends I left, bookkeepers, clerks, &c., many are now doing business on their own accounts, but have a hard time of it on account of the state of affairs here. Tomorrow I intend to take a run down to old Va., to see my folks. My mother and a sister are in exceedingly ill health; expect to be gone from here only a few days. I have now written all that bears on the important subject with us. Would write more definite, but, as you see, I am now unable to do so. I will write immediately on receipt of news. Let me hear from you *every* opportunity, and direct via Acapulco, as they get here sooner than by 'Frisco. I will send this that way. My kind regards to Slone "Manuelitta"—I think that's the way to spell the name; Guadalupe's family generally, Cecilia and the Tayoltitians generally. How are you and Cecilia now? Hoping that this may find you well and getting enough to eat, I remain as ever, your friend,

CHARLES H. EXALL.

The contents of this keep to yourself.

NEW YORK, *June* 15, 1868.

DEAR GRANGER: In my letter written in May I informed you of the possibility of my being able to do something with the Abra affairs through other parties. (The old company manifest the utmost indifference regarding or in reference to everything belonging to or connected with their affairs in Mexico, and have virtually given everything into my hands.) I also informed you I would communicate with you by mail of the 1st of June, giving you something definite. This I was unable to do, which will show to you by reasons which I will give. After my arrival here I was informed that some parties had been here consulting with one of the stockholders in reference to purchasing their affairs in Tayoltita. This party, on my arrival, was in Philadelphia; so I was unable to see them. After remaining here some eight or ten days awaiting them, I went to Virginia; remained there some days, when I was informed of the arrival in N. Y. of the parties above mentioned. I hurried on immediately; it was then too late to write by 1st of June mail. Since being here I have seen these people daily, and have given them every information which would tend to make them think favorably of the property—given statements, accounts, inventories, indebtedness, &c., &c., besides speaking as favorably of the property as possible. The prime mover in the affair is a man who knows a good deal concerning the property, and who expects (if he succeeds in organizing a co.) to get a position at the mines. This man has friends who live here and in Philadelphia; he is trying to induce them to enter into the enterprise and form a co., and, from what I gather from him, he has to an extent succeeded, but has not yet come to final terms. The proposition of this co. that is to be formed is to pay off you and I to start with, and give a certain interest to the old co. (The old *company refuse to pay us our dues, and we are totally unable to recover anything from them.*) I have given these parties a condensed summary of accounts of La Abra S. M. Co. I inclose a copy. You will see it *does not* accord with the books, but I gave it this way, as requested by the party who is endeavoring to start the co. An inventory of stock, as nearly as I could recollect, endeavoring not to go over the amount which I supposed on hand. I inclosed a copy—liabilities, also inventory of tools and material, as given by De Lagnel in Apl., 1867. The one I gave them is a copy of the one De Lagnel brought home with him, and of which you have copy at hacienda. It is exactly like his, with these exceptions: One silver-mounted saddle, $35; 3 Cal. saddles, $30; and in place of 10 mules at $600, I put 4 at $60=$240. With exceptions, it is exactly like the list De Lagnel brought on. My object in leaving these items out was on account of some not being there, and others for own uses, which I will hereafter mention. I do not send a copy of this last list, as there is or was one at the hacienda. It is necessary, as near as possible, that in event of this party taking hold of the works, that these things should be there, as represented, and show for themselves in event of parties being sent out to investigate. The mine which they think most of and will work, and on which the company is formed, "if it is formed," is the La Abra. So you see the great necessity of keeping that mine, as well as the rest, protected. Use your best judgment in affairs, then, keeping things in such shape as will advance the interest of affairs. Make the inducement as great as possible to induce parties to take hold; and in case any one should be sent out, or you written to, let your statements correspond with mine as regards stock. If possible, let them go beyond mine. The indebtedness of the co. to us I have represented to these parties as being to Jas. Granger, $2,850; to C. H. Exall, $5,113.32; Bank of Cal., $5,000. The statement regarding your account and mine, as represented, is over and above any and everything which we have gotten from the Co. To be a greater inducement to these parties to purchase, and let them see I had confidence in the mines, at their request I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent in stock of $850. This, I hope, will meet with your approval. Should anything occur, let your statements occur with mine. These parties leave for Philadelphia in a day or two, and will be able to report definitely in a week or two, when I will write you immediately, giving you all points in detail. I should not like these parties to come in contact with Green, Martin, or any one who would prejudice them, &c. If we can succeed, as I have stated here, we will be doing well as things are situated. Send me, as soon as possible, power to act for you. I can imagine your feelings away out in that damned gloomy place, and truly sympathize with you, and doing all in my power to get you away as soon as possible. Affairs here are very dull, little business doing. My health has been very much skaken since coming; suppose it results in change of climate. The weather has been, since my arrival, so damp, rainy, and disagreeable. Please do, as far as in your power, as I have suggested. The books don't let any one see for reason which will occur to you. My kind regards to Mr. Sloan. De Lagnel is at Fort Hamilton. I have not seen him; understand he will study divinity; don't know with what truth the report. Be assured you shall hear from me at the earliest moment. Kind regards to all. With best wishes and kindest feelings to yourself, I remain your friend,

CHARLES H. EXALL.

Address in care of Ginter and Colquit, 15 New st., N. Y.

RICHMOND, *July* 18, 1868.

DEAR GRANGER: In my last to you it informed you of the probability of a company being started, and on the formation of said company depended our salaries. Since writing my last I have seen the parties frequently, and have had long conversations with them in reference to raising this company and the paying of its indebtedness. The indebtedness to you and me they seemed willing to liquidate and take their chances with the rest. In my previous letter I instructed you in reference to the figures representing your and my amt.; keep it as it is, but make no entry. This party have gone to work and I believe will succeed in raising a company in a month or two. I have not been with them for the last week. My time has been spent partly in N. York and partly in Va. Was in N. Y. during Dem. conventions; an immense concourse of people assembled there to take part and see what was going on. The weather during the time was oppressively hot—almost unendurable. I arrived here on the 14th, and as I have nothing to do will remain here awhile. New York, and in fact all the States, it is excessively dull—a complete stagnation of business. There is one other thing I did some weeks ago, as I thought I had best make as sure as possible about getting my pay. It was this: I entered suit against the company, not with the expectation of recovery just yet, but something to fall back on in case this company was not formed; recently there has been a better show for raising the company than ever before. So I just let the suit remain over in a manner in which it can be revived at any moment. I want you to send me your statement and your power of attorney to act for you in case I found it necessary to continue the suit; if I succeed in recovering for self could probably recover for you. The amount to be sued for is the just amount due me at $3,500 up to time of my demand on them in person for a payment and for my traveling expenses, &c. I will inform you in time to make proper entries, sending a list of expenses, &c. If I have to deal with a new company I want to get out of them all I can; if with the old one I must deal with them strictly. I will in time write you as things develop. By all means keep the mines secure, particularly the Abra—don't allow anyone to touch the books or don't give any statements—these affairs are now in your hands, and without satisfaction we must not do ourselves injustice. Before leaving New York the other day, I went down to Fort Hamilton to see De Lagnel; he seemed much pleased to meet with me. I spent some hours with him very pleasantly; his wife is a fine woman. De L. is and has been doing nothing since leaving Mexico. He is pretty hard up, I reckon. In fact there are many men in a like condition, your humble servant included, though not starving. A day or two before leaving New York I heard Bartolow had arrived there—did not see him. What do you think of the nomination of Seymour and Blair? People seem to think that the carrying the Democratic ticket is the only hope of saving the country from the devil. I have great hopes that this party may succeed. I expect to return to New York again in a short time to watch how things get along, and will inform you accordingly. Remember me kindly to Mr. Sloan and his friends, and you, dear old fellow, look upon me as ever your true friend,

CHARLES H. EXALL.

Directions as given in former letter.

The following letters show how far Exall's visit to New York in March was treated as an "abandonment" in August, 1868, at the mines:

Depositions of J. F. and Trinidad Gamboa.

[Translation.]

Certified copy of the depositions of Juan Francisco and Trinidad Gamboa before the constitutional judge of La Noria in the matter of the claim of La Abra Company against Mexico.

Seal of the district court of the State of Sinaloa.

The citizen attorney-at-law, Rafael Villegas, district judge of the State of Sinaloa, to the citizen constitutional judge of La Noria, makes known that in the proceedings instituted at this court by the citizen district attorney of the federation in this State, with the object of impairing the evidence presented to the Mixed Commission in the matter of the claim of La Abra Mining Company, I have this day decreed as follows: Presented with the accompanying interrogatory: Let Mr. E. G. Kelton, United States consul at this port, be summoned; let a requisition be issued to the citizen constitutional judge of La Noria to examine the witnesses, Francisco and Trinidad Gamboa, according to said interrogatory, to which proceeding the subaltern collector of the stamped paper revenue at that place, or the person in charge of the post-office, is to be present. The district judge of the State of Sinaloa so decreed it and signed with the clerk.

VILLEGAS.

POMPEYO F. PELAEZ, *Clerk.*

The interrogatory referred to is as follows:

Interrogatory according to which the witnesses, Juan Francisco and Trinidad Gamboa, are to be examined by the citizen constitutional judge of La Noria.

1st. Let Juan Francisco Gamboa state his name, age, &c., &c.

2nd. To state whether he has ever given his deposition in the matter of the claim, No. 489, of La Abra Mine, before the American consul at Mazatlan.

3rd. To state whether the deposition registered under his name in the book (page 61 and the following) presented to the Mixed Commission, of which a translation is herewith accompanied, is his; to state whether he ratifies it or has any observation to make about its contents or circumstances in which he gave it.

4th. To state whether in going to Mazatlan to give his deposition he did it at the earnest request of the American citizen Alonzo W. Adams, and why he would not give it before the judge of his residence or before the court of first instance of Mazatlan.

5th. To state under what conditions he agreed with Mr. Adams to go and give his deposition before the American consul; whether he received any money for that service or any other compensation; whether he lost any time and had any difficulties to come to any understanding with Adams.

6th. To state whether he is acquainted with or knows any witnesses that gave their deposition in the same way as he did in La Abra claim, or whether he knows that they were bribed or paid to answer in a certain manner, both in the case of La Abra, as in other similar ones, by suggestions and offers of Alonzo W. Adams. To explain his testimony.

Let Trinidad Gamboa state first his name, age, &c., &c.

2nd. To state whether he was ever asked by Mr. Alonzo W. Adams to depose in favor of the American claim of La Abra Company; whether he made him any offers, and why he did not make up his mind to depose in the way Adams wanted him to. To explain his testimony. Therefore, and in order that the foregoing decree may have its full effect, I require you, citizen judge, in the name of the federal justice, to take in the proper way the proceedings recommended to you and return me the original testimony.

Given at Mazatlan on the 13th of June, 1877.

RAFAEL VILLEGAS.

POMPEYO F. PELAEZ, *Clerk.*

It was received on the fourteenth day of June of the same year. In witness whereof. (A signature.)

Superior court of San Antonia de La Noria.

NORIA, *June 14th*, 1877.

As ordered by the citizen district judge of the state in his preceding decree, let the citizen agent of the stamped paper of this municipality be summoned, as also Francisco Gamboa and Trinidad Gamboa, the two last ones to be examined according to the interrogatory referred to. The citizen Benigno Toscano, constitutional judge of this canton, so decreed it and signed with the clerk. In witness whereof.

BENIGNO TOSCANO.

On the same date the above summons were issued as ordered. In witness whereof.

TOSCANO.

Superior court of San Antonia de La Noria.

Whereas the disirict court of the state has intrusted me with the prosecution of some judicial proceedings connected with others instituted at said court by the citizen federal district attorney with the view of impairing the proofs presented to the Mixed Commission in the claim of La Abra Mining Company; and whereas I am likewise ordered to summon you, and then proceed to examine Francisco Gamboa and Trinidad Gamboa; therefore I comply with said decree by enjoining you to appear before me to-morrow morning at 8 o'clock with the object expressed by the district court.

NORIA, *June* 14, **1877.**

BENIGNO TOSCANO,
Citizen Agent of the Internal Revenue at this Town, Present.

Superior court of San Antonio de La Noria.

To-morrow at eight o'clock in the morning the citizen Trinidad Gamboa will appear before this court in order to take the proceedings decreed by the district court of the state, with the understanding that if he does not obey these summons he will be subject to the penalty prescribed by law.

NORIA, *June* 15, 1877.

The citizen JUAN FRANCISCO GAMBOA appeared on this date before me, and having been sworn to speak nothing but the truth in all he had to say, and after reading the inclosed interrogatory, he answered the first question, saying: That his name is as above written; 46 years of age; widower; farmer; resident of this place; has no more to say on this point.

To the second, he said that he remembers having signed a deposition relating to La Abra Company's claim.

To the third, he said that he does not know whether the translation read to him by the court (which is the same presented by the district attorney) contains literally the words of the deposition which he confesses to have signed, and of which he has not at present the least idea, owing to the state of intoxication he was in when he signed it; if the translation now before before him is taken exactly from the deposition he signed when he was not in a condition to judge of it, he cannot and must not ratify it, because it would be an untruth, as he has never known the Tayollita mines or La Abra Company referred to; he has never made any contract with said company to provide supplies, to carry ore; and deponent cannot, consequently, affirm such a deposition, because it would be a solemn falsehood. The deposition did not then seem to him false, and if he signed it it was because he thought it had no authenticity, if the state deponent was in is taken into consideration. Besides, the person that witnessed the act did not have any authority before the law, because if it is true that the American consul was present, he did not ask deponent any question, nor does he think that the consul had any right to interrogate him with any show of authority. Deponent also remembers that he at first refused to sign the deposition, but the entreaties of Messrs. Alonso W. Adams, James Granger, and Charles T. Galan were so urgent, and they tried so to persuade him, he resolved at last to sign it; that, besides, said Granger assured the payment to him and his brother, Trinidad Gamboa, of the sum of $200 which Mr. Alonso W. Adams had offered them if they would accompany him to Mazatlan to give their depositions before any authority in behalf of La Abra's claim.

To the fourth, he said that, being at the village of Cabazan, district of San Ignacio, Mr. Alonso W. Adams arrived there and asked him and his brother, Trinidad Gamboa, in a way to interest them, to accompany him to the chief town of said district to give their depositions before the judge of first instance of the place in regard to the claim of La Abra Mining Company; for which service he offered to pay their traveling expenses and give them a sum of money besides. Deponent and his brother then asked said Adams to give them $100 apiece, which he did; and then they followed him to where he wanted. Deponent does not know why Adams did not have the testimony taken before the court of that town. He received from Adams only $50 to go on his account to Cabazan and procure two false witnesses to testify in behalf of said claim, which deponent did not do. A few days later Adams returned to Cabazan, and invited them again to come to Mazatlan under new promise of payment. They followed himafter he agreed to give them both $200 at the port for their services, and defray their traveling expenses to and during their stay at Mazatlan. When they got to the port Adams got rooms for them at the hotel Iturbide. One evening, after they had been drinking some, said Adams invited them to the house of the American consul. They went there, and under the circumstances above related, and after some resistance on deponent's part he signed the paper, at the request of Mr. Adams and the entreaties of Mr. Granger and the attorney-at-law, Galan, above mentioned. After he signed it they came away from said house, and Adams gave deponent and his brother, Trinidad, in Machado's square, the $200 agreed upon.

To the fifth, he said that he agreed to go to Mazatlan to testify in consideration of the compensation promised, and lost no time in coming to an agreement with Adams in that respect.

To the sixth, he said that the English subject, Mr. Thom. Creader, was paid by Adams to go and testify in behalf of said claim, as also Mr. José María Loaiza, of San Ignacio; the former received from the hands of Adams a certain sum of money, the amount of which he can not tell, and the latter received $100 at the same time that deponent and his brother Trinidad received the $200 in Machado's square.

Deponent says that the above is the truth under the oath he has taken; that the facts he mentions herein and of which he was an eye witness he knows them to be true, and the rest knows by reliable information to be true also. He affirmed and ratified said deposition after it was read to him, and signed it with the judge and clerk.

BENIGNO TOSCANO.
J. F. GAMBOA.

I. MAGAÑA, *Clerk.*

On the same date appeared before the court the citizen TRINIDAD GAMBOA, and being sworn to speak nothing but the truth in all he had to say, he answered to the first question of said interrogatory that his name is as above written; 43 years of age; married; a miner, and resident of this place; has no more to say on this point.

To the second, he said that both him and his brother, Juan Francisco Gamboa, were invited, at the village of Cabazan, with the object referred to, by the American, Mr. Alonso W. Adams, who offered to defray all their expenses, and reward them besides for the service; they followed him to San Ignacio, where he does not know why Adams did not have the testimony taken there; in this trip all he received on his account was $100; Adams gave his brother, at San Ignacio, $50 to go to Cabazan and procure two false witnesses to testify in the same way, but his brother did not do it. On their return from San Ignacio, Adams urged them again at Cabazan, with the same object and under new conditions of payment, to accompany him to Mazatlan; they followed him, but Adams did not have the testimony taken their either. One evening, after they had been drinking some, Adams invited them to the house of the American consul, where they went, and where Adams asked deponent to sign a paper; and as said paper contained a deposition altogether false, he would not sign it, notwithstanding the entreaties of Adams, Granger, and the attorney-at-law, Galan; consequently deponent and Adams fell out somewhat. A few minutes later they came away from the house, and in Machado's square deponent exacted the $100 Adams had promised him for his expenses, which, after a slight resistance, he handed to him.

Deponent says that the above is the truth under the oath he has taken; that the facts he refers herein, and of which he was an eye witness, he knows them to be true, and the rest he knows by reliable information to be true also. He affirmed and ratified this deposition after it was read to him, and signed it with the presiding judge and clerk.

BENIGNO TOSCANO.
J. M. GAMBOA.

I. MAGAÑA, *Clerk*.

Seal of the superior court of San Antonio de la Noria.

NORIA, *June* 15, 1877.

Having finished taking the present testimony, which is contained in five pages, let it be returned to the court from which it came. The citizen Benigno Toscano, constitutional judge of this town, so decreed it and signed with the clerk. In witness whereof.

BENIGNO TOSCANO.

I. MAGAÑA, *Clerk*.

On the same date the present testimony was returned, contained in five pages, to the district court of the State, as ordered. In witness whereof.

I. MAGAÑA, *Clerk*.

A true copy, taken from the original by petition of the citizen district attorney, contained in six pages, stamped with the seal of this court and authenticated by the judge and clerk.

RAFAEL VILLEGAS.

POMPEYO F. PELAEZ, *Clerk*.
MAZATLAN, *July* 2, 1877.

Seal of the district court of the State of Sinaloa.
Seal of the prefecture of the district of Mazatlan.

The undersigned prefect of the district certifies that the foregoing signatures of the district judge of the State, citizen Rafael Villegas, and of the clerk of said court, citizen Pompeyo F. Pelaez, are the same ones they use in their public and private documents.

ALEJANDRO NARCIO.

MAZATLAN, *July* 3, 1877.

10c. internal-revenue stamp, canceled.

UNITED STATES CONSULATE,
Mazatlan, July 16, 1877.

I, E. G. Kelton, consul of the U. S. A. for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of A. Narcio, prefect of this district of Mazatlan, is his true and genuine signature, made and acknowledged in my presence; that said A. Narcio is personally known to me, and that he is entitled to full faith and credit.

Given under my hand and seal of this consulate the day and year above written.

E. G. KELTON,
U. S. Consul.

Seal of the U. S. consulate at Mazatlan.

Deposition of José Maria Loaiza.

[Translation.]

Seal of the district court of the State of Sinaloa.

Copy of a testimony taken before the citizen judge of first instance of San Ignacio in reference to an American claim presented before the respective Commission by La Abra Mining Company.

Seal of the district court of the State of Sinaloa. Citizen judge of first instance.

The town syndic, with the character of legal representative of the Federal Government, before you, in proper form, appears and states: That in the matter of the claim presented against Mexico by La Abra Silver Mining Company, it is of the greatest importance that the deposition of the witness, JOSÉ MARIA LOAIZA, be taken by you on the points of the following interrogatory:

1st. To state his name, age, &c.

2nd. To state whether he made a deposition before the American consul at the port of Mazatlan, on the 14th day of May, eighteen hundred and seventy.

3d. Whether the same deposition is genuine, and he ratifies it. as it appears on pages 77 to 81 of the printed book, published in English, and entitled No. 489, La Abra Silver Mining Company against the Republic of Mexico, under the treaty of July 4th, 1868, which will be shown to him.

4th. To state whether he ever received any money from Alonso W. Adams to go to Mazatlan to give his testimony, and whether he received while there any other amount of money as compensation for said service.

5th. To state whether he knows and is certain that said Alonzo W. Adams went in search of witnesses paid to testify on behalf of said company, both in their claim as in others.

After taking said deposition, please return to me the original thereof for whatever use I may think proper. He makes the necessary protestations.

San Ignacio, June 4th, 1877.

MANUEL M. MANJARRES.

SAN IGNACIO, *June* 5th, 1877.

The above petition was presented to-day at eight o'clock in the morning. In witness whereof,

VELASQUEZ.

SAN IGNACIO, *June* 5th, 1877.

As soon as the above petition is ratified, let the witness, José Ma. Loaiza be summoned in order to testify before the syndic who presented this petition. The judge of first instance so decreed and signed in the presence of the clerk.

SANIZ.

VELASQUEZ, *Clerk*.

The citizen, Manuel Manjarres, legal representative of the Federal Government, appeared at once before the court, and being notified of the preceding order, said that he ratifies his petition, and will be present when the deposition of the witness José Maria Loaiza is taken and signed.

MANUEL M. MANJARRES.

FRANCISCO VELASQUEZ, *Clerk*.

On the fifth day of June, 1877, at San Ignacio, the citizen JOSÉ MARIA LOAIZA was summoned and appeared before the court, and, being personally known to me, he was duly sworn to speak nothing but the truth; and the above interrogatory being shown to him he said, in answer to the first question, that his name was as above written; native and resident of this village; 50 years of age; miner by profession; married; has no direct or indirect interest in the claim of the La Abra Mining Company, situated at Tayoltila, in the State of Durango; has no relation or friendship with any of its partners.

2nd. It is true that he made a deposition in the port of Mazatlan, before the United States consul, on the day above mentioned (14th of May, 1870). He said, in answer to the third question, that he made the above deposition in Spanish, his native language, and that the one in English (which language he speaks passably), according to the translation presented to him, and what he himself can understand, is not only incorrect and disfigured, but most of the facts therein related are substantially false, such as, for instance, that he is a freight man, a calling which is absolutely unknown and strange to him, and consequently he could not have served them in the transportation of articles or goods of the company; it is not true either that he has seen or inspected the mines worked by said company, nor, much less, that he made any calculation about the yield of the ores; he served them in a subaltern position

for three months (and not for three years), in which time they did not pay him any salary; he had occasion to see in the yard of the reduction works several *cargas* of ore piled up, which he at first sight recognized most of it to be what is called *tepetate* rock; it is also false that the things intrusted to him, or those the management of which was given to others, were ever stolen or taken by any of the contending forces at that time; he can rather affirm that they enjoyed complete security. Deponent had passports issued by General Corona and by the chiefs of the invading army in favor of the interests of said company.

He answered to the fourth question that when Mr. Alonso W. Adams passed through this place on his way to the mines of San Dimas, State of Durango, asked deponent to make a favorable deposition to the interests of La Abra Mining Company of Tayoltita; and on his way back to Mazatlan he spoke to him again on the same subject, and deponent promised to testify before this court; but Mr. Alonso W. Adams would not consent to this, and proposed to him to go before the American consul at Mazatlan, and he would defray his traveling expenses and pay him $180 due him on his salary. Said company exerted influence for the success of a claim deponent had pending against the United States, which were defended by the attorney-at-law, Carlos F. Galan. Deponent certainly went to Mazatlan, and about 8 or 9 o'clock in the evening they made him go to the consul's house, where there were, besides this official, Mr. Alonso W. Adams and Mr. Galan; and as deponent was a little intoxicated—a habit he used to indulge in at that time, but from which he has been entirely cured for the last five years, as it is public and notorious in this village—on his appearing before said gentlemen, they presented him his deposition, reading it to him in Spanish—the contents of which are different from those of the one shown him to-day—and making suggestions and repeated offers to him to sign it, which he did without seeing even whether it was written in English or in Spanish. Deponent remained in Mazatlan after that eight or ten days, and all they gave him for his expenses was sixty or seventy dollars, and did not pay him what they owed him on his salary, as they had promised.

He answered to the fifth question that he is certain, and can affirm, that Mr. Adams went in search of witnesses paid in order to testify on behalf of the alleged claim of the company working La Abra mine at Tayoltita, State of Durango, as he was accompanied from San Dimas by James Granger, Maria Cecilia Jimenez, and others whose names he does not remember, and brought with him from the village of Cabazan, of this district, Juan Francisco and Trinidad Gamboa, who accompanied him to Mazatlan. Deponent learned that they were going with the object of giving some testimony by request of and on account of Mr. Adams. They surely gave it, but deponent does not know its contents or what it refers to. He does not know either whether the compensation promised was paid to them or not.

The above is the truth by virtue of the oath he has taken; and after said deposition was read to him he affirmed and ratified it, signing it in the presence of the representative of the Federal Government, and also of the judge and clerk.

APOLINO SAINZ.
JOSÉ MARIA LOAISA.
MANUAL M. MANJARRES.

FRANCISCO VELASQUEZ, *Clerk.*

Having finished taking this testimony on this day, let the original thereof be delivered to the interested party as requested. The judge of the first instance of the district so ordered and signed with the clerk.

SANIZ.

VELASQUEZ, *Clerk.*

It was delivered in five pages. In witness whereof.

VELASQUEZ, *Clerk.*

A true copy taken from the original by request of the citizen district attorney.

LADISLAS GAONA.

MAZATLAN, *June 23rd*, 1877.

Seal of the district court of the state of Sinaloa.

RAFAEL VILLEGAS.

POMPEYO F. PELAEZ, *Clerk.*

Seal of the prefecture of the district of Mazatlan.

The undersigned, citizen prefect of Mazatlan, certifies that the above signatures of the citizen district judge of the State, Rafael Villegas, as also that of the clerk of the same court, citizen Pompeyo F. Pelaez, are the same they use in all their public and private documents.

Mazatlan, July 3rd, 1877.

ALEJANDRO NARCIO.

Canceled ten-cent internal-revenue stamp.

(Copy.)

UNITED STATES CONSULATE,
Mazatlan, July 16th, 1877.

I, E. G. Kelton, consul of the U. S. of America for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of A. Narcio, prefect of this district of Mazatlan, is his true and genuine signature, made and acknowledged in my presence; that said A. Narcio is personally known to me, and that he is entitled to full faith and credit.

Given under my hand and the seal of this consulate the day and year above written.

E. G. KELTON,
U. S. Consul.

Seal of the U. S. consulate at Mazatlan.

Deposition of Frederick Sundell.

[Translation.]

Year of 1877.

Seal of the district court of the State of Sinaloa.

The citizen district attorney, L. Gaona, prays that the witness Frederick Sundell be examined on several points relating to the claim made against the Mexican Republic by La Abra Mining Company.

Citizen judge:

RAFAEL VILLEGAS.

Clerk sec'y:

POMPEYO F. PELAEZ.

Citizen DISTRICT JUDGE:

The district attorney before you appears and avers—

That wishing to demonstrate at least the falsehood or inaccuracy of the evidence on which the Mixed Commission based their award in the American claim No. 489 of La Abra Mining Company, he thinks it his duty to come before the court and pray that with all the formalities of law and consulting the mass of documents in regard to said claim, the court be pleased to examine Mr. Frederick Sundell, who happens to be at present in this port, on his way to San Francisco, on the points contained in the inclosed interrogatory. It is according to law, and the district attorney makes all the necessary protestations.

Mazatlan, August 9, 1877.

L. GAONA.

Interrogatory according to which the district attorney prays that Mr. Frederick Sundell, assayer of the Durango Mining Company, situated in the San Dimas mining district, State of Durango, be examined:

1st. To state his name, age, occupation, &c., &c.

2nd. Which have been his residence and occupation from July, 1865, to January, 1870.

3rd. To state whether he knows or ever knew La Abra Mining Company.

4th. To state whether he ever visited the Tayoltita mine, and whether he knew and was intimate with the administrators or superintendents of La Abra Company or the other employees; and if so, to state their names.

5th. To state whether, in his judgment, the superintendents or administrators of La Abra Company were scientific or practical miners, and whether their assayers of ores were intelligent, practical, and experienced in mining matters.

6th. To state whether he has ever visited the mines and the reduction works of La Abra Company; to express the names of the mines; to state what said reduction works consisted of; and what he thinks could have been the value of said mines, as also of the ores taken out.

7th. To state whether in his character of assayer of the Durango Mining Company he has seen the kind of ores of the several mines in that district.

8th. To state when the machinery for the reduction of ores belonging to La Abra Mining Company was forwarded and put up, and when they commenced working their ores. Was it during the time that Julian A. De Lagnel was administrator or superintendent, or before said person left the country?

9th. To state whether he knows what was the result obtained by said La Abra Company, and what was the yield of gold and silver on each ton of ore.

10th. To state the date in which Charles H. Exall arrived, and that in which he commenced to act as La Abra's superintendent.

11th. To state whether it is true that La Abra Company before putting up or starting their new reduction works they destroyed the hydraulic motor wheel, batteries, crushing mills, &c., &c., which had been used before by Castillo and Manjarrez for crushing and grinding their ore, and whether he thinks that this machinery was good for its purpose.

12th. To state whether he lived at the buildings of the Durango Mining Company, and whether he and the superintendent and the other employés of La Abra Company visited one another and conversed frequently.

13th. To state whether in the visits he made to Tayoltita he ever saw a great pile of ore at the grounds of La Abra Company. What quantity, more or less, could such a pile be, and what was it worth *per cargo?*

14th. To state whether he knows that La Abra Company suffered a robbery of ore, or whether he ever heard the superintendent or the other employés of the company speak of such a robbery.

15th. To state whether he ever heard that La Abra Company's buildings were attacked by robbers led by Macario Olvera, and whether such attack could have taken place without him knowing it.

16th. To state how many mules he saw or knew belonged to the company or to the employés, and whether he ever heard that said company owned any trains of mules.

17th. To state whether the Durango Mining Company received from Mazatlan at the same time as La Abra Company the necessary machinery to reduce ores, and whether this had the same proportions, power, or capacity; to state also whether both companies received at the same time from Mazatlan provisions, ingredients, merchandise, and other things.

18th. To state whether the Durango Company was ever attacked, or their mules or cargoes seized or confiscated; and whether he knows also that La Abra Company lost any mules and cargo either by robbery or seizure by the civil or military authorities of the Mexican Republic.

19th. To state whether by his being employed by the Durango Company, and considering the great and intimate acquaintance he had with the employés and superintendents of La Abra Company, the events referred to in the foregoing questions could have taken place without they coming to his knowledge.

20th. To state, after reading the affidavits of Bartholow and Exall contained in the book of evidence, in support of the claim of La Abra Company, relating to Juan Nepomuceno Manjarrez, Bartolo Rodriguez, and Camacho, whether he agrees with the opinions expressed about the latter, and what he thinks about them, their characters and antecedents.

21st. To state whether he knew Macario Olvera; what kind of acquaintance thus had with Charles H. Exall; to state all he knows in regard to Olvera and his conduct while he was political chief of the district, and whether he ever heard that Olvera expressed the desire to drive the Americans from the San Dimas Mines.

22nd. To state whether he knows or ever heard that Charles H. Exall got seventeen thousand dollars out of twenty tons of ore, or whether said Exall ever spoke of such a thing; and it is true that this said that they were working all the ores that paid the expenses of reduction, calculated at the rate of $12 per ton, this owing to their having stored up the necessary things, being able only in that way to use them and get the expenses.

23rd. To state whether Mr. Exall spoke publicly at La Abra Mines of his intended trip to New York long before he started, or whether he made a secret of it.

24th. To state what other Americans accompanied Exall when he left Tayoltita on his way to Mazatlan and the United States.

25th. To state the names of the Americans or other foreigners employed by La Abra Company when Mr. Exall left for New York.

26th. To state whether the only Americans that remained at La Abra Mines were Mr. James Granger and Mr. Sloan, and whether he ever heard that they were ever molested or injured.

27th. To state whether the Durango and Abra Mining Companies were both American corporations; whether they worked in the same district and canton, and were therefore subject to the same civil and military authorities of Mexico. Whether the Durango Company or La Abra Company were ever molested in their works by said authorities.

28th. To state, at last, whether he recognizes as his the inclosed translation, which will be shown to him, and whether he remembers precisely that he made said translation faithfully from the original signed by Charles H. Exall.

Mazatlan, August 9, 1877.

Presented to-day, at 10 o'clock in the morning.

PELAEZ, *Secretary.*

MAZATLAN, *August 9, 1877.*

Let the United States consul at this port be summoned in order to comply with the above petition of the district attorney, and summons be also issued to Mr. Frederick Sundell to appear personally at this court at three o'clock this afternoon. The district judge of the State of Sinaloa so decreed it, and signed with the secretary.

RAFAEL VILLEGAS.
POMPEYO F. PELAEZ,
Secretary.

Mr. E. S. Kelton, United States consul, was notified, and said that he heard it and signed.

E. S. KELSON.

PELAEZ, *Secretary.*

The citizen district attorney was notified in the same date, and said that he heard it and signed.

GAONA.

PELAEZ, *Secretary.*

On the date and hour agreed upon in the foregoing decree, Mr. FREDERICK SUNDELL appeared before this court and promised upon oath to speak nothing but the truth. Examined according to the points of the interrogatory of the citizen district attorney, he said that—

As regards the first point, his name is as above written; is 39 years of age; single; miner; born in Sweden; came to the Republic for the first time twelve years ago, and has lived most of the time at the San Dimas Mines, in the State of Durango; knows enough Spanish to make himself understood.

As regards the second point he said that he has stated the place of his residence, though he has not always lived at San Dimas; he was at Mazatlan from 1865 to the end of 1868. At the beginning of 1869 he left for San Francisco, California, and returned to Mexico and San Dimas in the month of October, 1871. His ordinary occupation while he remained at San Dimas, in the above-mentioned years, was that of assayer of ores of the Durango Mining Company.

As regards the third point, he said that he knew very well La Abra Mining Company.

As regards the fourth point, he said that he knew and visited several times the Tayoltita Mines, where La Abra Company was established. Was on friendly terms with Julian A. De Lagnel, who acted for some time as the superintendent of said company. He also knew and became acquainted with Charles H. Exall, who succeeded De Lagnel as superintendent when this left; he did not know any other superintendents.

As regards the fifth point, he said that he is certain, considering his acquaintance and frequent intercourse with said De Lagnel and Exall, that they were neither scientific nor practical miners, as he never saw them perform any operation of the assaying of ores. De Lagnel was only a military man, who had served as colonel in the Confederate army during the civil war in the United States. Exall was a clerk in a merchant's house in New York, and when he came to Mexico he did not have the least knowledge of mining.

As regards the sixth point, he said that he never visited the mines or works of La Abra Company. He knows they owned several mines under different names, as, for instance, "La Abra," "Rosario," "La Luz," "Talpa," "Sanz," "Cristo," and others, the names of which he does not remember. All the ore taken out of these mines was reduced in one building, containing ten stamp-mills, the necessary crushing-mills and washing-rooms, moved by a hydraulic wheel. He does not know what could have been the value of said mines, and as regards this point he refers to the details of the translation to be seen hereafter.

As regards the seventh point, he said that he knows and is perfectly acquainted with the kind of ores of the different mines at San Dimas.

As regards the eighth point, he said that he cannot tell precisely the date in which the machinery of La Abra Company commenced to work; he thinks it was some time in February, 1867. He is certain the reduction of ores began during the time that Julian De Lagnel acted as superintendent. He makes an explanation on this point in the translation above referred to.

As regards the ninth point, he said that he knows the results obtained by La Abra Company were bad. Dr. Elder, the assayer of the company, assured him that the ore generally yielded $9.00 a ton, although it contained some gold.

As regards the tenth point, he said that, not remembering exactly the dates, he thinks that Charles H. Evall arrived at Tayoltita in October, 1866, and must have taken charge as superintendent in April of the following year.

As regards the eleventh point, he said that he heard through some American laborers working at La Abra Mines, that before they put up their new works they

destroyed the batteries, crushing mills, and hydraulic wheel used till then in the working of ores, and put up by Castillo and Manjarrez, with the best results; the same laborers told him that they themselves had destroyed those things, leaving only the refining-pan and the *patio*.

As regards the twelfth point, he said it was true in all its parts, as deponent lived in the buildings of the Durango Company and had frequent intercourse with the persons therein mentioned.

As regards the thirteenth point, he said that he certainly saw during his visits to Tayoltita a great pile of ore taken out of La Abra Mines; he cannot tell the quantity, but thinks it might contain from three to five hundred tons; he supposes said ore could not pay the expenses of reduction, as it remains yet in the same place without anybody taking it, notwithstanding its being abandoned, and only a short distance from the reduction works called "Guadalupe," where said ore could be reduced if it had any value. Nobody takes care of it or troubles himself about it; he knows this to be so, as he is interested in some mines near those of La Abra. Two weeks ago he left San Dimas, his residence.

As regards the fourteenth point, he said that he has no personal knowledge, neither has he heard anything, about the robbery of ores La Abra Company complains of.

As regards the fifteenth point, he said that he never heard of the robbery spoken of, neither could it have taken place without it coming to his notice, as deponent's habitual residence was only two hours' ride from La Abra Mines, in the San Dimas district.

As regards the 16th point, he said that he saw from 10 to 15 mules belonging to La Abra Company and used by the employés thereof, but he never saw or heard that said company owned any train of mules.

As regards the seventeenth point, he said that the Durango Mining Company received certainly from Mazatlan, at the same time as La Abra Company, their machinery for the reduction of ores, which was of the same size and power; said companies also received from Mazatlan at the same time provisions, ingredients, tools, and merchandise.

As regards the eighteenth point, he said that as the Durango Mining Company never owned any train of mules, but had its ores carried by freight contracts they never lost any mules; and as La Abra Company was in the same condition, so they never lost any mules or cargo by robbers or otherwise. The Durango Company never suffered any seizure of goods or ores by the civil or military authorities of Mexico, and deponent does not know, nor has he heard, that La Abra Company ever suffered any confiscation from the same authorities.

As regards the nineteenth point, he said that it is impossible that the events referred to in the last point could have taken place without they coming to his knowledge, as he repeats that he lived near La Abra Mines and visited frequently the superintendents, De Lagnel and Exall, with whom he maintained close friendly relations.

As regards the 20th point, he said that he has read carefully the depositions of Bartholow and Exall, to be seen in the book of evidence in support of the claim of La Abra Company, as also the depositions about Juan Nepomuceno Manjarez, Bartolo Rodriguez, and Camacho; and deponent does not think right that they should be spoken of in such a way. The personal knowledge and frequent intercourse he had with said persons enables him to say that they were good and laborious men; they did not deserve the stigmatizing terms given to them, nor is it true that they had committed the crimes they are accused of. Juan Nepomuceno Manjarrez has been well known by deponent some years ago, and he never had anything to do, good or bad, with La Abra Company. Bartolo Rodriguez was for a long time employé of La Abra, and afterwards entered deponent's service, and he always saw him conduct himself properly; and Patricio Camacho was an old man of good behavior.

As regards the twenty-first point, he said that he knew Macario Olvera perfectly, who was on intimate terms with Charles Exall, visiting one another frequently and inviting each other to balls and breakfasts. During the time Olvera was political chief of San Dimas his conduct was good, and deponent never heard that the Americans were to be driven from San Dimas.

As regards the twenty-second point, he said that he does not know nor ever heard that Exall got seventeen thousand dollars out of twenty tons of ore; in the frequent conversations he had with said Exall he never heard him mention such a thing; he remembers him saying to deponent that he was working all the ores that paid the expenses, which he calculated at $12 per ton, and that he had stored up all the necessary chemicals and things for reduction, and only in this way he could get the expenses.

As regards the twenty-third point, he said that Exall spoke frequently and in public of his intended trip to New York, and never made a secret of it.

As regards the twenty-fourth point, he said he does not know that Exall went with any other Americans when he left for Mazatlan and New York.

As regards the 25th point, he said that of the foreigners employed by La Abra Company at the time referred to in this point deponent only knew Mr. James Granger and Mr. N. Sloan.

As regards the 26th point, he said that the only foreigners that remained in the mines after Exall left were Messrs. Granger and Sloan, and deponent never heard that they were ever molested or injured in their persons or property.

As regards the 27th point, he said that he has answered it, both as regards the proximity of the Durango and Abra Companies and their being in the same district of San Dimas. Both companies never suffered any damage from the civil or military authorities of Mexico, and all that deponent has to add is that both were North American companies.

As regards the twenty-eighth point, he said that he acknowledges as his the translation referred to, made from the original, about which the court of the first instance of San Dimas took some legal steps. He also stated that for the better understanding of the facts related in this deposition they presented him a translation into English of the interrogatory of the district attorney, and deponent wrote an answer to each one of the points contained therein, which he signed with his own hand, and can be appended to these documents, as he has gone into more details. He did not think necessary to reply to the 28th point.

Deponent ratified the above after it was read to him, and signed with the judge and clerk.

VILLEGAS.
FREDERICK SUNDELL.

P. F. PELAEZ, *Clerk*.

MAZATLAN, *August 10th*, 1877.

The petition of the citizen district attorney having been complied with, let notice thereof be given to him, in order that he may request what he may think proper. The district judge of the State of Sinaloa so decreed and signed with the clerk.

VILLEGAS.

PELAEZ, *Clerk*.

The citizen district attorney having been notified on the same date, said that he only prays the court to be pleased to give him a certified copy of this deposition for the uses he may think proper, and signed.

GAONA.

PELAEZ, *Clerk*.

MAZATLAN, *August 14th*, 1877.

Let the certified copy the district attorney asks for be given to him. The citizen attorney-at-law, Rafael Villegas, district judge of the State, so decreed and signed.

VILLEGAS.

PELAEZ, *Clerk*.

On the fourteenth of the same month the copy to which the preceding order refers was finished, contained in fifteen pages, and delivered to the citizen district attorney, who signed in acknowledgment of the receipt thereof.

GAONA.

PELAEZ, *Clerk*.

MAZATLAN, *September 24th*, 1877.

Let the communication of the citizen district attorney of this date, inserting that of the department of foreign relations, be added hereto, and let a certified copy of the deposition the department refers to be taken. Although it is not very clearly expressed which one is wanted, the undersigned judge supposes it is the present one. Let the original deposition be delivered to the district attorney, and a copy thereof be kept in the archives of this court. The district judge so decreed and signed in witness whereof.

VILLEGAS.

PELAEZ, *Clerk*.

Stamped seal of the second class, 50 cents, for the years 1872–'73. Seal of the office of the stamped paper at San Dimas.

Citizen judge of the 1st instance.

The undersigned, residing at present in this mineral district, before you, with due respect and in the form and manner most proper in law, appears and avers:

That being in charge of the affairs of La Abra at Tayoltita, and it being necessary to him that the credential he has be translated into the Spanish language, he re-

quests your honor to be pleased to summon Mr. Frederick Sundell, in order that if this person consents to it he may make a translation of the accompanying letter which serves him as proof of his being in charge of said affairs by proxy.

The undersigned requests your honor to be pleased to comply with his petition and certify said translation on the margin thereof.

He prays your offices, &c., &c.

San Dimas, September 27th, 1873.

JAMES GRANGER.

Court of the first instance of San Dimas.

SAN DIMAS, *September 26th*, 1873.

Let the above petition be granted. Let the citizen Frederick Sundell be summoned to appear before this court at eight o'clock to-morrow morning, to be informed about the request made by the citizen James Granger in his foregoing petition. So the present judge ordered and signed with the witness.

MANUEL TORRERO.

Witness: DIONISIO GUTIERREZ.

SAN DIMAS, *September 27th*, 1873.

At eight o'clock this morning Mr. Frederick Sundell appeared before this court, to whom was made known the petition of Mr. James Granger, and he said that he heard it and accepted, signing the present together with the judge and witness.

MANUEL TORRERO,
FREDERICK SUNDELL,
DIONISIO GUTIERREZ.

The judge put at one this petition and letter before Mr. Frederick Sundell and provided him with the necessary paper to make the translation desired. In witness whereof he signed.

TORRERO.

(Copy.)

TAYOLTITA, *February* 21, 1868.

Mr. JAMES GRANGER:

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra Silver Mining Company, together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

SAN DIMAS, *October 1st*, 1873.

The letter to which Mr. James Granger's petition of the 26th of September, ultimo, refers having been translated, let it be returned to the interested party, to make use of as he may think proper. The present judge so decreed and signed with the witnesses.

MANUEL TORRERO.

Witness: DIONISIO GUTIERREZ.
Witness: ISIDORO MENDEZ.

These papers were delivered on the same date, containing three pages, and note thereof taken.

TORRERO.

First. Frederick Sundell resides at San Dimas, State of Durango; is a native of Sweden; 39 years of age; a miner; at present on his way to San Francisco to buy machinery for the "Cinco Señores" and "Araña" mines of San Dimas, in which he is interested.

Second. He said that he has resided at San Dimas from September, 1865, to the year of 1868, occupied as assayer of ores by the Durango Mining Company, and for a short while kept the books of the company.

Third. He said yes.

Fourth. He said that he has visited Tayoltita several times, and became acquainted with Julian A. De Lagnel and Charles H. Exall, superintendents of La Abra Company. He does not Thomas T. Bartholow (Julian H).

Fifth. He said that he heard that Julian A. De Lagnel graduated at the West Point Military Academy in the United States, and came to Mexico in 1847 with the American Army, in whose service he remained till the war broke out between the North and South; he then resigned and entered the Confederate army and stayed till the end of the war; he was then appointed superintendent of La Abra Company, and he has had no other position, nor has deponent heard that De Lagnel had ever ad any mining business to attend to. Depone nt has also heard that Charles H. Exall had never entered a mine till he came to Mexico from New York, where he was employed as a clerk in a dry-goods store belonging to Messrs. Claffin, Mellen & Company; deponent never heard that Exall had any knowledge of mines; De Lagnel could assay, but not very well.

Sixth. He said that he has never visited the La Abra mines, but he thinks that they are of very little value, as since the company abandoned them the "Rosario" and "Arrallan" mines have been denounced and taken possession of by other persons, who, after working them for a short while, abandoned them. Deponent also knows that several of the other mines have been denounced, but never taken possession of; and now all the mines that used to belong to La Abra Company can be denounced, with the exception of La Abra, denounced recently by Constantin Ex, and the Rosario mine, denounced by George Lares and partners. Deponent has never heard that La Abra mines ever yielded a large quantity of ore; he heard Mr. Ignacio Manjarrez say that when he was interested in said mines they had very little ore that paid any profit. La Abra Company put up their reduction works, consisting of one ten-stamp mill, washing pans, and washing rooms, with all the necessary things, under a frame roof. The machinery was at that time good, and was in front of the building used by Castillo & Manjarrez as a store and a residence. Said company put up a building very badly constructed, particularly the foundations thereof, and very soon the roof and walls commenced to crack and fall.

Seventh. He said that he thinks he has assayed the ores of all the mines in the district, and knows them generally.

Eighth. He said that the reduction works of La Abra Company commenced to work in February, 1867; he is sure they began before the year was out, as he remembers that said De Lagnel brought to the Durango Mining Company some very dirty silver, containing much copper, which he said was the product of the machinery, and that he wanted to go to the United States and take a silver bar to the company in New York. Deponent refined said silver and returned it a clean bar. He understands that De Lagnel arrived at Mazatlan about the first of April, 1867, and a little before entering the port the silver bar was seized as smuggled goods, but deponent has heard that it was returned to him and permission given to export it after he paid its value.

Ninth. He said that, according to his best information, the results obtained by La Abra Company were bad; but he cannot tell what was the yield per cargo or ton. Mr. Elder, the assayer, told him the ore yielded $9 00 per ton.

Tenth. Mr. Exall arrived at Tayoltita on October 16, 1866, and began to act as superintendent when Mr. de Lagnel left in April, 1867.

Eleventh. He said that he does not know personally whether La Abra Company destroyed the machinery belonging to Castillo and Manzarrez, but several employees have told him that the company destroyed it, and he believes it to be true. With the system used in this country, called the *patio* system, he knows by experience that the machinery destroyed was as good as any other.

Twelfth. Deponent lived in the building occupied by the Durango Mining Company, and every little while somebody employed by La Abra Company at Tayoltita used to come and see him.

Thirteenth. He said that he has seen a large pile of ore at Tayoltita, which he thinks might contain 300 or perhaps as much as 500 tons; he has never assayed any of it, but thinks that it was entirely valueless.

Fourteenth. Deponent has never heard of the robbery of ores from the Tayoltita grounds; neither has he ever heard the employees speak of such a robbery.

Fifteenth. He said that he had never heard of such a thing, and it could not have taken place without him knowing it.

Sixteenth. He does not know exactly; he has seen some mules in the corral, perhaps 10 or 15, and has never heard that they had any more.

Seventeenth. The Durango Mining Company brought from Mazatlan, at the same time as La Abra Company, some machinery of the same kind and size, and deponent thinks that they brought also provisions, implements, and goods, as they had so many persons employed.

Eighteenth. The Durango Mining Company never lost any mules, because they did not have them; their goods were carried by freightmen owning the mules, and La Abra's goods were carried in the same way; therefore neither company lost any mules or cargo by seizure by the military authorities.

Nineteenth. It is absolutely impossible, considering the great interests at stake, that any robberies or seizures could have taken place without deponent knowing it.

Twentieth. He has read the depositions; has known Juan N. Manzarres from the year 1867, who lives at San Ignacio and owns a little farm near by; is a man well off; his brother Ignacio lives at San Dimas, and Mr. Cheno comes to see him every one or two years and stays a week or a month; deponent has never heard that Manzarrez worked at Tayoltita, because he did not need it to live; is a man of the best character and reputation. Bartolo Rodriguez has been employed, more or less, for the last three years in the Arana mine, in which he is interested, and always filled positions of trust; has very good reputation and is a peaceful man, and, what is most extraordinary, he does not drink. Camancho was at that time over sixty years old, and had very good character.

Twenty-first. He knew Macario Olvera, who was very intimate with Messrs. Reed and Martin, superintendents of the Durango Mining Company, and came to see them frequently; when Mr. Exall visited the reduction works of said company, it seems that Mr. Olvera was one of his best friends, and deponent has heard that Mr. Exall was sometimes treated to music, breakfasts, &c., &c., and never heard Mr. Olvera express any such desire; he has, on the contrary, heard that he was very well disposed towards foreigners.

Twenty-second. Deponent has never heard that La Abra Company obtained such results; he knows that they reduced all the ores that paid the expenses as the best way to realize the value of the material. Had they made at the rate of $17,000 on each 20 tons of ore, they would not have abandoned the business.

Twenty-third. Mr. Reed, superintendent of the Durango Mining Company, left Durango in January of 1868, and deponent remembers that Mr. Exall came to Mr. Reed's and told him how sorry he was not to accompany him in his trip, but he was in hopes of following him in the next steamer, as he had to go to New York to consult with the company; Exall said this in public, and did not make a secret of his intended trip.

Twenty-fourth. He has never heard that any Americans accompanied him.

Twenty-fifth. Sloan and Granger were all.

Twenty-sixth. Sloan and Granger were here when deponent left in the year 1868, and he has never heard that they were molested.

Twenty-seventh. Both companies were American; worked in the same district or canton, and were subject to the same civil and military authorities, and deponent knows that said authorities never molested neither company.

Mazatlan, August 9th, 1877.

FREDERICK SUNDELL.

District attorney of the court of first instance of Sinaloa.

The citizen minister of foreign relations says, in a communication of the 3d instant to this office, as follows:

"Your despatch of the 15th of last month has been received at this department, inclosing a certified copy of the testimony taken before that district court, in regard to the claim No. 489, of La Abra Mining Company against Mexico. Be pleased to send to this department as soon as possible the original testimony, leaving in that court a copy thereof duly legalized."

And I have the honor to transcribe it to you, so that you may order with the least possible delay, as recommended by the department, that the original testimony the above note refers to be delivered to me, leaving in that court the corresponding legalized copy.

Liberty the in constitution.

Mazatlan, September 24th, 1877.

L. GAONA.

Citizen district judge of Sinaloa, present.

Seal of the district court of Sinaloa.

The citizen district attorney, having been informed of the above note, said that he heard it, and that the testimony to which the department refers cannot surely be any other than the copy thereof, which the undersigned sent on the fifteenth of August. He signed it.

GAONA.

PELAEZ, *Clerk*.

On this the first of October, the copy of the testimony to which the decree of the 4th of last month refers was finished, containing 14 pages, and the original thereof was delivered to the citizen district attorney, containing 17 pages.

PELAEZ, *Clerk*.

The citizen attorney at law Protasio P. Tagle, minister of justice and public instruction, hereby certifies that the citizens Rafael Villegas and Ladislao Gaono fill at present, the former the position of district judge of the State of Sinaloa, and the latter that of district attorney of the same court; and that their signatures authenticating this testimony belong to them, and are the same that they use in their official and private acts, and are entitled to full faith and credit.

And in order that the present may produce its legal effects, I issue this in the National Palace of Mexico, on the 20th of October, 1877.

PROTASIO P. TAGLE.

Seal of the department of justice and public instruction, October 20th, 1877.

Number 415.

The undersigned, chief clerk of the department of foreign relations, certifies that the citizen Protasio P. Tagle is minister of justice and public instruction, and that the foregoing signature is his.

Mexico, October 22nd, 1877.

ELEUTERIO AVILA.

Seal Mexican Republic, department of foreign relations.

Depositions of Cipriana Quiroz, Dionoisio Gutierrez, Paz Gurrola, and Martin Delgado, with certified copy of letter of C. B. Dahlgren to Quiros.

[Translation.]

Seal of the court of first instance of San Dimas. Citizen judge of first instance.

The syndic, with the character of representative of the federal Government in this mining district, before you in the proper form appears and states that it is necessary to our national interests, in the matter of the American claim against Mexico for injuries and damages to La Abra Company in this district, to get a document existing in the archives of this court relating to the negative given on the 23rd of May, eighteen hundred and seventy-two, to the American Charles B. Dahlgreen, about the disposal of a piece of machinery belonging to said company. It is also necessary to the elucidation of said question, the deposition of the citizen, Cipriano Quiroz de la O, on the following points:

First. To state his name, age, &c., &c., and whether he has any interest in said claim on the part of Mexico.

2nd. To state whether he received from the American, Charles B. Dahlgren, any sum of money for the sale of the above-mentioned piece of machinery.

Third. To state whether in consequence of said sale, he authorized Dahlgren, as judge of this place at that time, to dispose of most of said machinery.

4th. To state whether he was ever authorized by the general or State government to sell or adjudicate anything belonging to said company, or allow the taking of the same.

It is also necessary to have the depositions of the citizens Dionisio Gutierrez, Martin Delgado, and Paz Gurrola on the following points: To state their names, age, &c., and the interest Mexico has in said question. To state whether they know, and it is notorious in this district, the waste and destruction caused by the administrators of said company who gave away furniture and things belonging to the company. To state whether they know, and it is public, that there are at the reduction works of the company the principal parts of the machinery, as also some large piles of ore containing a great quantity of *cargas*, which silver ore is so poor that nobody will have it.

The syndic requests your honor to take said depositions and to furnish him with a legalized copy of the same, as also a copy of the document above referred, to in order to make of them the proper use. He protests not to act with malice.

San Dimas, May 30, eighteen hundred and seventy-seven.

R. HERMOSILLO.

SAN DIMAS, *May thirty, eighteen hundred and seventy-seven.*

The above petition having been presented let the depositions needed be taken; let a legalized copy of them be made, as also of the document above mentioned. The second conciliatory judge, acting as judge of the first instance of this district, so decreed.

FELIPE SALCEDO.

Witness:
E. PADILLA.
Witness:
LORENZO RODRIGUEZ.

The court having opened on the same date, the witness, CIPRIANO QUIROZ DE LA O, to whom reference is made in the above interrogatory, appeared before me, and being duly sworn to tell nothing but the truth, he said, in answer to the first question, that his name was as above written; thirty-seven years of age; married; merchant; resident of this village; interested as Mexican in the American claim for injuries and damages to La Abra Mining Company, but he will give an impartial testimony.

He said, in answer to the second, that he has not received from the American, Charles B. Dahlgren, any money for the sale of any piece of the machinery belonging to La Abra Company, and he proves it with the document existing in this court, which shows that said Dahlgren petitioned deponent, who was then judge of first instance, for the delivery of said piece of machinery, which was denied to him.

He said, in answer to the third question, that he did not in any way grant authority, as judge or private individual, to Charles B. Dahlgren to dispose of anything in the mines or building belonging to said company.

He said, in answer to the fourth question, that he has never received orders from the general or State government to dispose of anything belonging to said company.

The above is the truth, which he affirmed and ratified before the judge and witnesses.

CIPRIANO QUIROZ DE LA O.
FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

The citizen DIONISIO GUTIERREZ, to whom reference is made in the above interrogatory, appeared in the same moment, and, being duly sworn, said that his name was as above written; forty years of age; a merchant; resident of this district, and interested in speaking the truth about the American claim against Mexico for interests of La Abra Company. He is certain, as it was public and notorious, that the superintendents of said company, whose names he does not remember, have destroyed the business entrusted to them; that the house inhabited by James Granger while he was in charge of said company had doors put in, as also shelves and counter, and an iron railing on the second floor Said superintendents sold to Mr. Juan Cuevas, of Huahuahune, several tools, and Mr. Charles B. Dahlgren disposed of pieces of the machinery belonging to La Abra Company, notwithstanding the refusal of the judge, to whom he addressed a petition with that object. That part of the machinery exists yet, though useless on account of its being destroyed and abandoned; that the ores left by the agents of the company are yet untouched, composed almost of (*topetates*) rock, with very little silver.

The above is the truth, which he affirmed and ratified after this his deposition was read to him. He signed it in the presence of the judge and witnesses.

DIONISIO GUTIERREZ.
FELIPE SALCEDO.

Witnesses:
E. PADILLIA.
LORENZO RODREGUEZ.

The witness MARTIN DELGADO, to whom reference is made in the above interrogatory, appeared on the same date before the court, and, being duly sworn, said that his name was as above written; forty-nine years of age; single; merchant; resident of this mining district, and interested, on account of his nationality, in the American claim against Mexico, but that he will give an impartial testimony.

He said that he knows it to be public in this place that Mr. James Granger, when he was in charge of the affairs of La Abra Company, had an iron railing put in his house, bought some furniture, and gave away a great quantity of salt and *panocha* which was sent to the Huahuahane and Gavilanes mines; he also gave deponent half a dozen pack saddles. It is notorious in this mining district that there exists yet in the reduction works of La Abra Company part of the machinery, a select of which (and deponent does not know what other pieces) was taken out by Mr. Charles B. Dahlgren; there is also a quantity of (*tepetate*) rock, containing very little silver, left there by the company.

The above is the truth, which he affirmed and ratified after this his deposition was read to him. He signed it before the judge and witnesses.

MARTIN DELGADO.
FELIPE SALCEDO.

Witnessses:
E. PADILLA.
LORENZO RODRIGUEZ.

The citizen PAZ GURROLA, mentioned in the above interrogatory, appeared on the same date before the court, and, being duly sworn, said that his name was as above-written; thirty-six years of age; single; merchant; resident of this district, and has no other interest than his nationality of Mexican in the matter of the American claim of La Abra Company, but will give an impartial testimony. He said that it is public and notorious that the destruction of the affairs of La Abra Company was caused by those in charge of the same, such as Mr. James Granger, who had three doors and an iron railing put in his house, sold salt and *panocha* to Don Juan Cuevas, of Huahuapane, and other goods to different persons of this district at very low prices. Deponent thinks that some parts of the machinery of said company are there yet, as the American, Charles B. Dahlgren, took most of it without permission; deponent witnessed this extraction as he carried said pieces on Dahlgren's account and part of which freight is due him yet; Dahlgren was then acting superintendent of the Durango Mining Company of New York; that there exists yet the pile of ores made by La Abra Company which they called speculation ores, but which was nothing but pure (*tepetate*) rock.

The above is the truth, which he affirmed and ratified after this his deposition was read to him. He signed it before the judge and witnesses.

PAZ GURROLA.
FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

The above testimony having been taken, let a legalized copy thereof be made out as ordered, as also of the document the syndic refers to. The undersigned, judge, so decreed.

FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

Number 12. There is no seal. Third-class seal. 50 cents. Authorized to be used (*habilitado*) for the years eighteen hundred and seventy-two and seventy-three, according to the supreme order of the fourteenth of February, eighteen hundred and fifty-six.

[Seal of the lower administration of the revenue of the stamped paper of San Dimas.]

FRANCISCO SUIROZ.

(Endorsed:) Sebastnia Trugillo, citizen judge of first instance.

CHARLES B. DAHLGREN, resident of this mining district and general administrator of the American company entitled Durango Mining Company of New York, appears before you, making faithful and legal manifestation that being in need for his machinery used in the reduction of ores, of an iorn wheel belonging to the machinery of La Abra Mining Company of Tayoltita, and which has been abandoned. he is going to dispose of said wheel, as also of its attachments. On making known to you what he intends to do, it is with the object that note of it be taken by the court in your worthy charge, so as to make it public, and that the value thereof be charged to him, to which effect he makes the necessary protestations to pay what he will be made responsible for either by cash payment or by the return of said wheel.

He requests your honor to be pleased to keep this petition in your court for his responsibility at all times, and publish it, should you think necessary to do it.

CHARLES B. DAHLGREN,
Administrator of the Durango Mining Company of New York.

SAN DIMAS, *May twenty-third, eighteen hundred and seventy-two.*

Court of the first instance of San Dimas.

May twenty-third, eighteen hundred and seventy-two.

The above petition having been presented, the undersigned judge, taking into consideration that La Abra Company referred to has filed a claim against the Mexican Republic, this court does not authorize the petitioner, Mr. Charles B. Dahlgren, to dispose of the wheel above mentioned, and if he does it it will be under his own responsibility, to which end let this order be published and posted in prominent places of this district. This order is to be made known to Mr. Dahlgren for his information. The undersigned judge so decreed, ordered, and signed before the witnesses.

CIPRIANO QUIROZ DE LA O.

Witnesses:
E. PADILLA,
NICANOR PEREZ.

On the same date the citizen Charles B. Dahlgren was notified of the above order, and said that he heard it. He signed it in the presence of the witnesses.

CHARLES B. DAHLGREN.,
CIPRIANO QUIROZ DE LA O.

Witnesses:
E. PADILLA,
M. CORDOVA.

On the thirty-first of May, eighteen hundred and seventy-seven, by judicial order of this date a legalized copy was taken of this document, as also of the testimony relating thereto.

In witness whereof:

FELIPE SALCEDO.

Witnesses:
E. PADILLA,
LORENZO RODRIGUEZ.

A true and faithful copy in four pages taken from the original by petition of the citizen syndic of this district and authenticated and signed on the thirty-first of May, eighteen hundred and seventy-seven.

FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

Clemente Laveaga, political chief of San Dimas, certifies that the preceding signatures of the citizens, judge of first instance, Felipe Salcedo, and of the witnesses, E. Padilla and Lorenzo Rodriguez, are the same they use and accustom to put in all their judicial and private acts. In witness whereof I give the present legalization at San Daims on the 31st of May, 1877.

CLEMENTE LAVEAGA.

(2 five-cent internal revenue stamps cancelled.)

Official reports of the La Abra Silver Mining Co., made under the laws of the State of New York, from January 16th, 1866, to January 20th, 1867.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, do find a certain annual report of La Abra Silver Mining Company there remaining, in the words and figures following, to-wit:

[NEW YORK SEAL.]

Annual report of La Abra Silver Mining Company, made this sixteenth day of January, 1866, as required by law as follows:

The capital stock of said company is three hundred thousand dollars, say $300,000.
Dividend shares of one hundred dollars each.
The amount actually paid in is seventy-six thousand dollars, say $76,000.
The company have issued in payment for La Abra Silver Mine seventy-two thousand dollars of stock of the company, say $22,000.
The company have no indebtedness ascertained.

WM. L. HEARN, *Prest.*
LEWIS MORRIS,
WESTON & BIRCH,
D. J. GARTH,
S. P. NUCKOLLS,
H. P. BENNET,
Trustees.

CITY AND COUNTY OF NEW YORK, *ss:*

William L. Hearn, being duly sworn, says that he is the president of La Abra Silver Mining Company above named, and that the foregoing report by him and others subscribed is correct and true.

WM. L. HEARN.

[U. S. int. rev. stamp 5c. cancelled.]

Sworn to before me January 17, 1866.

JOHN M. SCRIBNER,
Notary Public.

(Endorsed:) Filed Jan'y 18, 1866.

All which we have caused by these presents to be exemplified, and the seal of our said county to be hereunto affixed.

Witness Hon. Charles P. Daly, presiding judge of our said court of common pleas for the city and county of New York, at the court-house, in the city of New York, the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

HENRY A. GUMBLETON,
County Clerk.

I, Charles P. Daly, judge, and presiding judge of the court of common pleas for the city and county of New York, in the State of New York, do hereby certify that Henry A. Gumbleton, whose name is subscribed to the preceding exemplification, is the clerk of the county of New York, duly elected and sworn, and that full faith and credit are due his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said county of New York, and that the said attestation thereof is in due form of law and by the proper officer.

Dated New York, Nov. 14th, 1878.

CHAS. P. DALY.

STATE OF NEW YORK,
City and County of New York, ss:

I, Nathaniel Jarvis, jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Charles P. Daly, whose name is subscribed to the preceding certificate, is a judge, and the presiding judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court, this 14th day of November, 1878.

[SEAL.] NATH'L JARVIS, JR., *C.*

The people of the State of New York, by the grace of God free and independent, to [SEAL] all whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, do find a certain annual report of the La Abra Silver Mining Company there remaining, in the words and figures following, to wit:

Annual report of La Abra Silver Mining Company. Office, No. 20, Nassau street, New York.

Amount of capital stock	$300,000
Amount capital stock paid in	$157,000
Amount of existing debts of the company not exceeding	$70,000

Nov. 20th, 1867.

GEO. C. COLLINS,
Pres't.

D. J. GARTH,
W. N. WORTHINGTON,
JNO. H. GARTH,
Trustees.

[U. S. int. rev. stamp, 5c. Cancelled.]

CITY AND COUNTY OF NEW YORK, *ss:*

Geo. C. Collins, being duly sworn, says that he is the president of La Abra Silver Mining Company above named, and that the foregoing report and the several matters therein contained are, and each of them is, true.

GEO. C. COLLINS,
Pres't.

November 23, 1867.

HENRY SNELL,
Notary Public, N. Y. City and Co.

(Endorsed:) Filed Nov. 25, 1867.

All which we have caused by these presents to be exemplified and the seal of our said county to be hereunto affixed.

Witness Hon. Charles P. Daly, presiding judge of our said court of common pleas for the city and county of New York, at the court-house, in the city of New York, the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

HENRY A. GUMBLETON,
County Clerk.

I, Charles P. Daly, judge, and presiding judge of the court of common pleas for the city and county of New York, being the court of the county of New York, in the State of New York, do hereby certify that Henry A. Gumbleton, whose name is subscribed to the preceding exemplification, is the clerk of the county of New York, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said county of New York, and that the said attestation thereof is in due form of law and by the proper officer.

Dated New York, Nov. 14th, 1878.

CHAS. P. DALY.

STATE OF NEW YORK,
City and County of New York, ss:

I, Nathaniel Jarvis, jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Charles P. Daly, whose name is subscribed to the preceding certificate, is a judge, and the presiding judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 14th day of November, 1878.

[SEAL.] NATH'L JARVIS, JR., *C'k.*

The people of the State of New York, by the grace of God free and independent, to [SEAL.] all to whom these presents shall come or may concern, greeting:

Know ye that we, having examined the records and files in the office of the clerk of the county of New York, do find a certain annual report of La Abra Silver Mining Company there remaining, in the words and figures following, to wit:

Annual report of La Abra Silver Mining Company.

Amount of capital stock	$300,000
Amount of capital stock actually paid in	157,000
Amount of existing debts of the company do not exceed	72,000

Dated New York, Jan. 20, 1868.

GEO. C. COLLINS,
Pres't.

GEO. C. COLLINS,
W. N. WORTHINGTON,
A. H. GIBBS,
Trustees.

[U. S. int. rev. stamp, 5c. Cancelled.]

CITY AND COUNTY OF NEW YORK:

George C. Collins, being duly sworn, says that he is the president of La Abra Silver Mining Company above named; that the foregoing report and the several matters therein contained are, and each of them is, true.

GEO. C. COLLINS.

Sworn to before me January 21st, 1868.

HENRY SNELL,
Notary Public.

(Endorsed:) Filed Jan'y 21, 1868.

All which we have caused by these presents to be exemplified, and the seal of our said county to be hereunto affixed.

Witness Hon. Charles P. Daly, presiding judge of our said court of common pleas for the city and county of New York, at the court-house in the city of New York, the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

HENRY A. GUMBLETON,
County Clerk.

I, Charles P. Daly, judge, and presiding judge of the court of common pleas for the city and county of New York, being the court of the county of New York, in the State of New York, do hereby certify that Henry A. Gumbleton, whose name is subscribed to the preceding exemplification, is the clerk of the county of New York, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said county of New York, and that the said attestation thereof is in due form of law, and by the proper officer.

Dated New York, Nov. 14th, 1878.

CHAS. P. DALY.

STATE OF NEW YORK,
City and County of New York, ss:

I, Nathaniel Jarvis, jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Charles P. Daly, whose name is subscribed to the preceding certificate, is a judge, and the presiding judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 14th day of Nov., 1878.

[SEAL.] NATH'L JARVIS, JR., *C'k.*

The people of the State of New York, by the grace of God free and independent, to [SEAL.] all to whom these presents shall come or may concern, greeting:

Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, do find a certain annual report of the La Abra Silver Mining Company there remaining, in the words and figures following, to wit:

Annual report of La Abra Silver Mining Company.

The amount of the capital of said company is $300,000.
The amount of said capital actually paid in is $235,000.
And the existing debts of said company amount to $154,431.06.
Dated New York, Jan. 20th, 1877.

I. G. BALDWIN,
Pres't.
I. G. BALDWIN,
D. J. GRATH,
J. M. C. BARTHOLOW,
S. S. ELY,
Trustees.

CITY AND COUNTY OF NEW YORK, *ss:*

I. G. Baldwin, being duly sworn, says that he is the president of the above-named La Abra Silver Mining Company, and that the foregoing report and all and singular the matter therein stated are correct and true to the best of his knowledge, information, and belief.

I. G. BALDWIN,
President.

Sworn to before me January 20th, 1877.
[L. S.]

JAS. W. HALE,
Public Notary, 69 Wall St.

(Endorsed:) Filed 20 Jan., 1877.

All which we have caused by these presents to be exemplified, and the seal of our said county to be hereunto affixed.

Witness Hon. Charles P. Daly, presiding judge of our said court of common pleas for the city and county of New York, at the court-house in the city of New York, the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

HENRY A. GUMBLETON,
County Clerk.

I, Charles P. Daly, judge, and presiding judge of the court of common pleas for the city and county of New York, being the court of the county of New York, in the State of New York, do hereby certify that Henry A. Gumbleton, whose name is subscribed to the preceding exemplification, is the clerk of the county of New York duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said county of New York, and that the said attestation thereof is in due form of law, and by the proper officer.

Dated New York, Nov. 14th, 1878.

CHAS. P. DALY.

STATE OF NEW YORK,
City and County of New York, ss:

I, Nathaniel Jarvis, jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Charles P. Daly, whose name is subscribed to the preceding certificate, is a judge, and the presiding judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof I have hereto set my hand and affixed the seal of the said court this 14th day of Nov., 1878.

[SEAL.] NATH'L JARVIS, JR., *C'k.*

In the Court of Claims.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.*
} In Equity. No. 17,917.

The joint and several demurrer of La Abra Silver Mining Company, Eugene Jones, Sumner Stow Ely, Samuel Shellabarger, Jeremiah M. Wilson, Crammond Kennedy, George H. Williams, and Daniel M. Adams, executor of Alonzo W. Adams, deceased, defendants, to the bill of complaint of the United States, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show:

1. That by the Constitution and laws of the United States the subject-matter of the complainant's suit is not within the jurisdiction of this honorable court or of any court of the United States, but is within the final and exclusive control of the Executive Department of the Government of the United States.

2. That the question whether the award which was rendered in favor of the defendant, La Abra Silver Mining Company, by Sir Edward Thornton, as umpire of the United States and Mexican Claims Commission, under the treaty of July 4, 1868, between the United

States and Mexico, was obtained in whole or part by fraud; and the question whether the whole or any part of the money received and remaining undistributed by the Secretary of State on account of the said award should be returned by the President of the United States to the Government of Mexico, are not, nor is either of them, competent, fit, or proper to be considered and finally determined by this honorable court, or by any municipal court of either of the two sovereign parties to the said treaty, but that the said questions are, and each of them is, of diplomatic or political nature and cognizance, and that Congress has no power to authorize this honorable court, or any court of the United States, to consider and finally determine the said questions, or either of them, as against the powers and discretions appertaining to the executive department of the Government of the United States.

3. That the United States has not such interest in the matters and things alleged in the said bill of complaint as to enable it to maintain this suit or to entitle it to the relief prayed for in the said bill.

4. That the Government of Mexico is the party pecuniarily interested in this suit, and that at all times since the discovery of the alleged frauds and injuries set forth in the said bill of complaint the said Government of Mexico has had a remedy by suit against the alleged wrongdoers in the courts of the United States for the annulment of the said award and the recovery of the moneys paid by the said government on account thereof, and that by failing since such alleged discovery to prosecute such suit the said Government of Mexico has been guilty of laches, and has forfeited all rights to relief in equity, and that, therefore, the United States is not entitled to demand such relief for the benefit or in the interest of Mexico in this suit.

5. That a mixed commission created and acting under and by virtue of such a treaty as that of July 4, 1868, between the United States and Mexico, is recognized by the law of nations and by the Constitution and laws of the United States as, and that it is, in fact and law, a court of exclusive and final jurisdiction, and that an award of such a commission is recognized by the law of nations and by the Constitution and laws of the United States as, and is, in fact and law, a judgment of a court belonging to the judicial system of the Government of the United States, and can not be set aside, reopened, or vacated by a municipal court of the United States, either in virtue of pretended authority or jurisdiction conferred upon such court by act of Congress or otherwise, and that Congress can not grant a new trial in respect of matters so finally determined and concluded by international arbitration under such a treaty; but on the contrary, such an award can, on the part of the United States, be set aside, vacated, or reopened only by the action of the treaty-making power of the government of the United States; and that the question presented by the complainants' bill of complaint, to wit, whether the said award shall be reopened or not on the grounds alleged in the said bill, having been submitted to the said treaty-making power and by it decided in the negative, is *res adjudicata*.

6. That it appears on the face of the bill that the question whether the award in favor of the defendant, La Abra Silver Mining Company, was obtained in whole or part by fraud, effectuated by means of false swearing or other corrupt and fraudulent practices, is substantially the same question that was tried by the commissioners under the treaty of July 4, 1868, between the United States and Mexico, such fraud and fraudulent practices having been charged by the Mexican agent and commissioner at the

trial, and that the said question, on the disagreement of the two commissioners in respect of the integrity of the witnesses and the credibility and weight of the evidence for and against the claim of the said defendant, was referred to the umpire for his decision, and having been by him decided in favor of this defendant, is *res adjudicata* and can not be re-examined and re-determined by this honorable court.

7. That the act of Congress under which this suit is prosecuted is unconstitutional and inoperative on the further grounds that it assumes and undertakes to direct, control, and bind the courts in adjudicating the questions submitted for the final adjudication of the courts named in the act, to receive evidence and apply legal principles to the said adjudication which are erroneous and wholly inadmissible according to law as administered in the courts of the United States in like cases; and such act undertakes to prescribe to the court what weight and effect they shall give to the evidence, and how the court shall reach the conclusion that said award was obtained in whole or in part through fraud.

8. That inasmuch and because the questions presented by the complainants' bill are of a political and diplomatic nature, and not justifiable, or fit and proper to be considered and finally determined by a municipal court, Congress can not impose upon this honorable court, or upon the Supreme Court of the United States, or upon the judges thereof, the trial and determination of such questions.

9. That said act of Congress is inoperative and void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval which it ever received being on the 28th of December, A. D. 1892, when Congress was not

in session, both houses of Congress having adjourned on the 22d of December, A. D. 1892, to the 4th of January, A. D. 1893.

10. That the complainants' bill of complaint does not set forth facts sufficient to constitute a cause of action or to warrant this honorable court in granting any relief in the premises.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and humbly pray the judgment of this honorable court whether they or either of them should be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

SHELLABARGER & WILSON,
CRAMMOND KENNEDY,
Attorneys for the aforesaid Defendants.

CITY OF WASHINGTON, *District of Columbia.* } *ss.*

Crammond Kennedy, one of the aforesaid defendants, of full age, being duly sworn according to law, saith that the foregoing demurrer is not interposed for delay, but in good faith for the cause therein set forth.

CRAMMOND KENNEDY.

Sworn and subscribed before me this 16th day of September, A. D. 1893.

SIMON LYON,
[SEAL.] *Notary Public, District of Columbia.*

I certify that I have perused the complainants' bill in the above entitled cause, and that the foregoing demurrer, in my opinion, is well-founded in point of law.

JOHN C. FAY.

Filed September 16, 1893.

IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.*
} In Equity. No. 17,917.

It is hereby stipulated and agreed between counsel for the U. S. and the defendant company that the arguments for and against the claim of the said company, the opinions of the Commissioners and Umpire, the motions made for a rehearing and the decision thereon, contained in the record of the case (La Abra Mining Company *v.* Mexico, No. 489) among the archives of the Department of State, the testimony taken before a sub-committee of the Foreign Relations Committee of the Senate, and printed in Report No. 2705, Senate, 50th Congress, 2d session, and any publication by authority of Congress relating to the said company's claim may be cited or referred to for what they may be worth by either party in the argument on demurrer.

ROBERT B. LINES,
Specl. Asst. to the Atty. Gen.
SHELLABARGER & WILSON &
CRAMMOND KENNEDY,
Of Counsel for La Abra Co. et al.

Filed Nov. 18, 1893.

IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.* } In Equity. No. 17,917.

IV.—Order Overruling Demurrer.

At a Court of Claims held in the City of Washington on the 16th day of April, 1894, the opinion of the Court, by Judge Weldon, was filed, and it was ordered that the demurrer to the bill herein be overruled, with leave to the respondents to answer, if they so elect, on or before the first day of July next.

BY THE COURT.

judgment of this court, although the company's claim from the beginning has been of diplomatic cognizance, and the award in its favor is the result of international arbitration under a convention between two nations, and the question whether the claim should be readjudicated or not has been submitted by Mexico and the United States to the treaty-making authorities of the two governments and decided in the negative (see *supra*, par. 10 (*a*) and (*b*).

(*c*) The act also provides (sec. 3) for an appeal from any final decision in said cause to the Supreme Court of the United States. This is a conclusive test of the nature of the jurisdiction which the act intends to confer. (*The Western Cherokee Indians* v. *The United States*, 27 C. Cls., 1; *Harvey* v. *United States*, 105 U. S., 671; *United States* v. *Old Settlers*, 148 U. S., 427.)

(*d*) The act also provides (sec. 4) for the return of the money by the President to Mexico in case it shall be finally adjudged that the award was obtained by fraud; and (sec. 5) for the distribution of the funds in whole or part to the company or its assigns in case the final judgment of the court shall be that the award or some severable part of it was not obtained by fraud.

(*e*) Everything connected with the disposition of the funds in question is thus made to depend absolutely upon the final judgment that may be rendered in this suit. The whole affair is taken out of the hands of the Executive, or, as Mr. Attorney-General, giving his view of the act, says in his bill (Par. XIX, p. 21):

"It is the right and duty of your orator to have the facts relating to said claim and award inquired of by your honorable court, and, if it shall be adjudged by your honorable court that the said award was obtained through fraud, * * * to return the proceeds of the said award to the said Republic of Mexico."

Thus the questions between the United States and the defendant company, and also the questions between the United States and Mexico, growing out of the company's claim and the award of the mixed commission under the convention of July 4, 1868, are to be "determined" and "finally adjudged" by the Court of Claims, or, on appeal, by the Supreme Court of the United States. And according to the admission made in his oral argument by the learned counsel

for the complainant, and repeated in his brief (pp. 134, 135), this final judgment is to be the outcome of a new trial by this court of the same issues and of the same issues only which were tried and determined by the mixed commission under the treaty. Complainant's admission on this point is as follows:

"Defendants, through one of their counsel, Mr. Kennedy, have filed an argument of 90 pages in support of their sixth and tenth causes of demurrer. Their sixth cause is that the allegations of the bill (including certain newly discovered proofs appended thereto as Exhibit B, and by Paragraph XVI of the bill made part thereof) relate solely to issues passed upon by the mixed commission when it examined the claims of La Abra Company. This is true, and there is no need to say anything more on that point in behalf of complainant. If this be ground for demurrer, the bill must be dismissed, and the whole purpose of the act of 1892 must fail (if the power it confers be judicial)."

WELDON, J., delivered the opinion of the court:

On the 14th day of July, 1868, the United States entered into a convention with the Republic of Mexico for the appointment and organization of a commission to adjust and determine such claims of citizens of the United States against the Republic of Mexico, and claims of citizens of said Republic against the United States, as had been presented to the government of either party to said convention for its interposition with the other since February 2, 1848; and which might be presented to the commissioners, to be appointed under said convention, within eleven months from the day of their first meeting. By the terms of the treaty the awards of the commission, or of the umpire appointed by it, were to have the force of absolute finality and conclusiveness, and operate as a settlement of such claims. The treaty was ratified by both parties on the 1st day of February, 1869, and proclaimed by the President of the United States on the 1st day of February, 1869. (15 Stat. L., 679).

The commissioners appointed by the respective parties held their first meeting on July 31, 1869, and thereafter, in pursuance of the power vested in them, appointed an umpire.

The commissioners and umpire who finally acted upon the claim which is in controversy in this proceeding were Mr.

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Henry Wadsworth on behalf of the United States, Señor Don Manuel Maria de Zamacona on the part of Mexico, and the Right Honorable Edward Thornton, K. C. B., envoy extraordinary and minister plenipotentiary to the United States of her Majesty the Queen of Great Britain, as umpire. Mr. J. Hubley Ashton appeared as agent of the United States and Mr. Caleb Cushing as agent of Mexico. On or before the 30th of June, 1870, the United States, through their agent, presented to said commissioners, appointed as aforesaid, 873 claims, aggregating the sum of $470,126,613.40, and 144 claims, the amounts of which were not stated, and the Republic of Mexico, through its agent, presented to the commission 998 claims, aggregating the sum of $86,661,891.15. On the 19th of April, 1871, by a further convention, the time in which the commissioners were to decide claims was extended one year; and by further convention the time was extended to the commissioners and the umpire until the 20th of November 1876.

Pursuant to the power vested in said commissioners, they made money awards to the United States (including those awarded by the decisions of umpires) in the sum of $4,125,622.20, in favor of Mexico in the sum of $150,498.41, and the difference between said amounts was paid by Mexico to the Secretary of State, in annual installments, as required by the several treaties aforesaid.

On the 17th of March, 1870, La Abra Silver Mining Company, by its attorneys, gave notice to the United States of the existence of a claim of said company against the Republic of Mexico for the sum of $1,930,000, for alleged damages and losses suffered by it in consequence of outrages and violence committed by the authorities of said Republic to and against the rights of said company in the years 1867 and 1868; the notice was, by the Secretary of State, referred to said commissioners, and the company on the 14th of June, 1870, filed with the commissioners a memorial in which it is substantially alleged that in the year 1865, under and by act of the legislature of the State of New York, the said company became a body corporate, that said company was chartered for the "purchase and mining, melting, dressing and smelting, buying and selling argentiferous and other ores, minerals and metal;" that the stockholders were citizens of the State of New York, the

amount of capital stock $300,000, and the existence of the company limited to fifty years; that part of its business by the terms of its charter was to be carried on outside said State, to wit, at Tayoltita, in the State of Durango and in the mineral district of San Dimas, both in the Republic of Mexico. That shortly after said incorporation the company purchased valuable mines and haciendas in the States of Durango and Sinaloa; that said mines purchased, as aforesaid, in Durango became and were known by the name of La Abra Mines; that upon becoming the proprietors of said mines, the said company proceeded with all possible dispatch to develop and improve the same; that in the purchase of the mine machinery and property incident to its successful operation the company invested the sum of $303,000; and that as a result of such improvement and expenditure, it was getting out of said mines a large amount of rich ore and were in the act of realizing a profit of $1,000,000 per annum; but it was compelled to abandon said mines by reason of the unfriendly and illegal acts and conduct of the officials of the Republic of Mexico; that intense prejudice existed in the public mind against all Americans; that such prejudice was intensified by the belief that the United States intended to annex said States to the dominion and territory of the United States; that the agents and servants of said company were arrested without cause; and acts of violence were committed against the property of the company which were encouraged by the authorities of Mexico; that the servants of the said company while in the performance of their duty were intimidated, killed, and driven out by the Mexican people; that the authorities made no effort to protect the property of the company, and that the purpose was to obtain possession and control of said property. It is further alleged that in consequence of such treatment the company was compelled to abandon its mine and other valuable property, which at the time of abandonment was a damage to the company of $3,000,030.

It is further alleged that at the time of the abandonment as aforesaid, the said company was compelled to abandon one thousand tons of ore, worth at the time the sum of $500,000, and which was wholly lost; that the profits of the company if permitted to work the mines would have been at the rate of

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$1,000,000 per annum; that in consideration of the premises the loss to the company is $3,000,030; that the whole amount of the claim belongs to the company; that it has not recovered any indemnity for said claim; that the claim was not presented prior to January 1, 1869, to the Department of State of either Government, or to the minister of the United States at Mexico.

Such proceedings in relation to said claim were had: that the same was heard by the said commissioners on the memorial and evidence aforesaid on or about the 19th day of May, 1875; that after hearing and considering said claim, said commissioners differed in opinion as to the allowance thereof, Commissioner Zamacona delivering his opinion that said claim should be rejected altogether, on the ground that the evidence in support thereof was insufficient, false, and in part procured by fraud, and that it was outweighed by the defensive evidence, and Commissioner Wadsworth delivering his opinion in the words and figures following, to wit:

"The company in my opinion is entitled to indemnity for the seizures of its money, supplies, mule trains, and other property by the Mexican armed forces, under command of their officers, undoubtedly for the use of such troops, and for the destruction of the mining property and interests of the company by the various Mexican authorities, civil and military.

"The amount of money seized and taken by force, according to the proof, as I read it, was altogether $2,978. The value of the several mule trains and supplies seized and appropriated for the public use I make, say, $75,000. The property and interests destroyed in addition, by the arbitrary, lawless, and malicious acts of the authorities, amounted to a large sum, difficult to estimate, but equal in my judgment to the total investment made by the company, less the aggregate of the money, teams, and supplies taken as above stated.

"Upon these sums the claimant should have interest in lieu of prospective profits.

"The profits of mining in Mexico during civil war (that is at all times nearly) and under the extraordinary circumstances surrounding claimant are more than doubtful. But I do not consider prospective profits even a part of the measure of damages in such cases. They are at best speculative, while interest is a definite and moderate allowance that may, with great propriety, take their place.

"It is, however, idle for me to go into this important case with any particularity, since it must go to the umpire to be disposed of by him according to his views alone."

And thereupon said claim was referred to Sir Edward Thornton, umpire, for his decision upon the points of disagreement between said commissioners.

Thereafter, on the 27th day of December, 1875, he decided that the said Republic of Mexico should pay, on account of said claim, the sum of $358,791.06, for the expenditures of said defendant La Abra Silver Mining Company, with interest on said sum, and the further sum of $100,000 for the value of the unreduced ores alleged to have been extracted from said mines and abandoned by said defendant company, with interest on said last-named sum, and delivered his opinion in the words and figures following, to wit:

"LA ABRA MINING COMPANY *v.* MEXICO, NO. 489.

"AWARD OF THE UMPIRE.

"With reference to the case of 'La Abra Silver Mining Company *v.* Mexico,' No. 489, the umpire is fully satisfied and can not doubt that the company is entitled to be considered a corporation, or company of citizens of the United States, in accordance with the terms of the convention of July 4, 1868, having been duly chartered in conformity with the laws of the State of New York.

"He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful, or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

"There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring their capital into it and raising up industrial establishments of all kinds. With this view it issued proclamations encouraging the immigration of foreigners, and promising them certain advantages and full protection. It can not be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were situated did not fulfill the engagements entered into by their Government, but, on the contrary, behaved toward them in an unfriendly and hostile manner. The ground of their claim is that these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works and to leave the Republic.

"The evidence on the part of the claimants is, in the umpire's

opinion, of great weight; the witnesses are, for the most part, highly respectable and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted or even weakened by the evidence submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

"It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and, finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that, when so determined a spirit of hostility on the part of the local authorities (one of whom was the jefe politico, who wielded great power) and so much indifference by the State government were displayed toward the claimants, it would have been of any avail to appeal to the courts of justice would be puerile. In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

"The umpire is of opinion that the Mexican Government, which, with a spirit of liberality which does it honor, encouraged all foreigners to bring their capital into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities. What the amount of this compensation should be it is very difficult to decide. The umpire is of opinion that the claimants should be reimbursed the amount of their expenditures and also the value of the ores extracted which they were forced to abandon, with interest upon both these sums. He can not consent to make any award on account of prospective gains, nor on account of the so-called value of the mines. Mining is proverbially the most uncertain of undertakings; mines of the

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very best reputation and character suddenly come to an end either from the exhaustion of the veins or from flooding or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested. They may be greater or less or none at all, and there may be even great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value, the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business and upon the amount of the ores reduced and of those extracted and deposited at the reduction works is a further compensation which, in the opinion of the umpire, that Government ought to pay.

"The evidence of George C. Collins, with regard to the amount invested, is clear and straightforward. He states it to be—

From subscriptions and sales of stock	$235,000.00
Lent and advanced	64,291.06
Due for rent, expenses, salaries, law expenses	42,500.00
	341,791.06

"Any so-called 'forced loans' and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants of the country. The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations can not proceed. To the above mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores.

"The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there

is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well regulated a business as the umpire believes that it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction. The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore must necessarily be vague and uncertain, and that of its average value still more so. Still, the umpire is strongly of opinion that claimants are entitled to an award upon this portion of the claim.

"He will put it at $100,000. It is possible that it is much less than the real value of the ores, but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award. Neither should interest be allowed on this amount so soon as on the others, for the reduction of the ores would have taken time—say a year. It is not shown that the company had received any dividends before the period of the forced abandonment of the mines, about March 20, 1868. Neither ought interest to be awarded before that date.

"The umpire therefore awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents ($358,791.06), with an annual interest of 6 per cent from March 20, 1868, to the date of the final award; and further, the sum of one hundred thousand Mexican gold dollars ($100,000), with the same interest from March 20, 1869, to the said date of the final award.

"EDW. THORNTON.

"WASHINGTON, *December 27, 1875.*"

Thereafter, on the 29th day of January, 1876, and the 19th day of September, 1876, Mr. Avila, agent for the Republic of Mexico, filed with the umpire a motion for a rehearing of the claim, on the grounds set forth in the opinion of Mr. Zamacona, commissioner, as aforesaid, and on the further ground that the allowance of $100,000 with interest on the value of unreduced ores was invalid, because no allowance for the ores had been made by Mr. Wadsworth, commissioner, and the question of such allowance had not been referred to the

umpire. But the umpire, on the 20th day of October, 1876, denied the motion for rehearing, and on the 20th day of November, 1876, the functions of the umpire terminated, as provided by the convention of April 29, 1876, aforesaid. By a decision of the umpire, dated July 31, 1876, that date was fixed as the date to which interest on all claims was to be computed, therefore the award on the claim of the said defendant company, including interest, amounted to $683,041.32.

In the year 1877 the authorities of the Republic of Mexico were advised, as it is alleged, that certain testimony offered on the part of said company was false, and procured by use of money in the subornation of witnesses; and in said year were further informed, that since the proceeding before the commissioners, important and material testimony had been discovered, which, if presented to the commissioners and umpire, would have changed the result of the examination of said claim. On the 18th June, 1878, Congress passed an act, chapter 262 (20 Stat. L., 144), directing the distribution of the fund paid by Mexico under the decree and judgment of the commission; but authorized the President to investigate any charges of fraud presented by the Mexican Government with respect to the claim of said mining company; and if in the opinion of the President "the honor of the United States, the principles of public law, or considerations of justice and equity, required that the award in the case of the said mining company should be opened and the case retried, it should be lawful to withhold payment of the award to said company, until such case should be retried, and decided in such manner as the governments of the United States and Mexico might agree, or Congress should otherwise direct."

On the 8th day of August, 1879, in pursuance of the provisions of said act, the Secretary of State of the United States, in a report to the President, stated that the evidence presented by the Republic of Mexico in said claim brought in grave doubt the sincerity of the evidence as to the measure of damages, and that the honor of the United States required a further investigation of the claim.

The Secretary further said:

"Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel

the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

"Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

"I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point."

Said opinion was approved and adopted by the President, and thereafter, on the 3d day of September, 1879, the Secretary further reported to the President:

"The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

"1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the commission to which, under the provision of the convention, it was presented by this Government.

"2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right, which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

"If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it."

In pursuance of the recommendation of the Secretary, there has been paid to the said mining company from time to time, until the amount received by the United States has been diminished to the sum of $403,030.08, which now remains in the possession of the Government.

Because of the alleged fraud against the justice and fairness of the award, an attempt was made to submit the question to a new convention; but the effort failed in consequence of the rejection of the treaty by the Senate of the United States. The matter being unadjusted, and the money still remaining in the possession of the United States in December, 1892, there was passed and approved an act, as follows:

"An act to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight.'

"Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the 'honor of the United States requires' that said case 'should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud,' but that 'the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses,' and that 'the authority for such an investigation must proceed from Congress;' and

"Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case 'be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:' Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law

or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

"SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said mixed commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

"SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

"SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said mixed commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud and effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

"SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be

finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said mixed commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

"Approved, December 28, 1892."

In pursuance of the provisions and powers of said act, the Attorney-General, on the 30th of March, A. D. 1893, in behalf of the United States, filed a bill of complaint, in which it is substantially alleged, *inter alia*, that the said company was not compelled by threats or acts of the Mexican officials or people to abandon its mines, as stated in the memorial of the company, as hereinbefore alleged; but that said claim was a sheer fabrication, and that every substantial allegation in said memorial contained is false; that the material testimony on which the award was made is and was false; and that the whole of said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices. It is further alleged, that in the year 1877 the Government of Mexico first learned of the existence of a press-copy book, containing letters and reports of the various superintendents of said company, and letters from the treasurer of said company, showing that the company was in possession of its mine until August, 1868, and that at said time the said mines were abandoned because of a lack of means on the part of the company, and because the working of the same was unprofitable; that the said company did not quit and abandon said mines because of the illegal act of the officers of Mexico; nor because of the illegal interference of the people of said Government.

It is alleged that the United States has obtained from the Republic of Mexico the said press-copy book, affidavits, letters, and documents, and files the same as Exhibit B to said bill. In further extension of the general allegations of the bill the complainant specifically charges as follows:

"And your orator says that * * * Julius A. de Lagnel can and will, under oath, testify to the genuineness of the said press-copy book and of the letters of the said D. J. Garth,

and to other important and material facts respecting the claim of said defendant La Abra Silver Mining Company; and that William P. Tuttle can and will testify to the genuineness of the said letters of the said Charles H. Exall; and that Charles B. Dahlgren, J. F. Gamboa, and J. M. Loaiza can and will testify that the affidavits purporting to have been made by them in support of said claim were false and were obtained by fraudulent practices; and that Frederick Sundell, A. B. Elder, Ramon Hermosillo, Eugenio Somero, and Francisco Torres can and will testify that the material allegations of the said memorial and the material testimony submitted by said defendant company in support of said claim are false. And your orator says that the said documentary evidence and the said witnesses will enable your orator conclusively to show the facts in the fifteenth paragraph of this bill alleged, and also the following which your orator says are the facts, to wit:

"That there was no hostility toward said defendant La Abra Silver Mining Company on the part of Mexican officials or people, but that, on the contrary, their relations to its officers were friendly. That 'prorogas,' or extensions of title, were frequently granted to said company, and that said company received from officers of the Republican army special military protection for its property and for the mule trains belonging to contractors with said company during the war between the Republican Government of Mexico and the Imperialists. * * *

"That the superintendent was not imprisoned, but only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint was imposed upon him. That no redress was denied the officers of the company, and no wrongs were inflicted upon them. That the officers of the company paraded their rights as American citizens, and Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty. That when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied, on the 6th day of October, 1867: 'There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent.'

"That as early as May, 1867, the said Garth, treasurer of said company, advised Superintendent Exall, at the mines, that no more money could be sent him by said company; that a draft on said company for $5,000, drawn by Superintendent

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De Lagnel through the Bank of California, had been protested, and that the said Exall must pay all expenses from the proceeds of the mines. And in July, 1867, the said Garth wrote the said Exall, 'if it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.'

"That the ores extracted from the said mines were worthless, the only reduction made being of 90 tons in August, 1867, and yielding less than $5 per ton, which was not enough to pay the cost of mining, and the rest being so poor that, according to Exall's report of October 6, 1867, it would not 'pay to thow it in the river.' That for this reason, if for no other, they were not carried off by Mexicans, and are still at the mines. * * *"

"That the said Granger remained in charge of the said mines and property until after August 12, 1868, on which date he advised the Mexican collector of taxes that there were neither money nor effects to pay taxes on said mines, but that the superintendent would return in November, 1868, when the same would be paid.

"That the said Exall and the president of the said defendant company, George C. Collins, and the first superintendent of the said defendant company, Thomas J. Bartholow, grossly and fraudulently misstated and exaggerated, in their affidavits made in support of said claim, the amount of money expended by said defendant company in the purchase and operation of its mines and property, and that said defendant company expended in such purchase and operation much less than $200,000.

"That instead of paying gold for twenty-two twenty-fourths of La Abra mine, as was sworn by the said Bartholow, the said defendant company paid for such interest in La Abra mine in stock of the said defendant company, and that the remaining two twenty-fourths interest in said La Abra mine belonged to a person who, although a claimant against Mexico before said commission, brought no claim on account of his said interest in said La Abra mine.

"That instead of purchasing 550 feet in said Nuestra Señora de Guadalupe mine, as sworn by the said Collins, the said defendant company purchased 550 shares of the stock of the Nuestra Señora de Guadalupe Mining Company, which company owned said last-named mine and made claim against Mexico before said commission, alleging that it had been forcibly compelled to abandon its Nuestra Señora de Guadalupe mine, which said claim was dismissed by said commission, wherefore said defendant company, even if it had been entitled to recover on any portion of its said claim against Mexico, was not entitled to recover for its investment in the stock of said Nuestra Señora de Guadalupe Mining Company.

"That the investment of said company derived from reduction of its ores was only $420.09, instead of $17,000, as sworn

by the said Exall and allowed by said umpire in his said award.

"That instead of the unreduced ores extracted by said defendant company and abandoned at its said mines being worth $100,000, as estimated by the said umpire, from conflicting statements of witnesses for said defendant company and allowed by the said umpire in his said award, said ores were absolutely worthless and would not pay the cost of reduction.

"That the affidavits of said J. F. Gamboa and said J. M. Loaiza so as aforesaid made in the month of May, 1870, and submitted to said commission by said defendant company were false and were procured by bribery and other unlawful means by the agent of said defendant company. And that the affidavit of the said Charles B. Dahlgren, as the same was submitted to said commission by said defendant company, was false and was not made by the said Dahlgren.

"Your orator further shows that by reason of the premises a controversy has arisen between your orator and the defendants hereinbefore named, the said defendants claiming that it is the duty of your orator to pay over to them the sums by them, the said defendants, claimed respectively from the proceeds of said award now in the possession of your orator, and your orator claiming that it is the right and duty of your orator to have the facts relating to said claim and award inquired of by your honorable court, and if it shall be adjudged by your honorable court that the said award was obtained through fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant La Abra Silver Mining Company or its agents, attorneys, or assigns, to return the proceeds of said award to the said Republic of Mexico; that the said defendants have made persistent demands upon the Department of State and upon the Congress of your orator for the payment to them of said moneys, and that some of the defendants have brought suits in the courts of your orator to compel such payment, and that, unless restrained by the judgment and decree of this honorable court, the said defendants will continue to harass and annoy your orator with such demands and suits.

"To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they and each of them, on oath, may full, true, direct, and perfect answer make to the matters and things aforesaid, and that as fully as if the same were here again repeated and they thereunto severally interrogated paragraph by paragraph.

"And that the said defendants and each and every of them may be compelled to disclose as aforesaid.

"And that the said defendants and each and every of them

may, by the decree of this honorable court, be forever restrained and enjoined from setting up any claim to any part of said award or of the moneys now, as aforesaid, in possession of your orator.

"And that the said award on the claim of the said defendant La Abra Silver Mining Company may, by the decree of this honorable court, be declared to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns."

To the bill the defendants file a demurrer; but "not confessing all or any of the matters and things in the complainant's bill of complaint alleged." In connection with that reservation as to the truth of the allegations of the bill, the defendants say for cause of demurrer in substance, that by the Constitution the subject-matter of the complainant's suit is not within the jurisdiction of this court or of any court of the United States, but is within exclusive control of the Executive Department; that the question whether the award was obtained in whole or in part by fraud, and the question whether the whole or any part of the money should be returned by the President to Mexico, are not competent, fit, or proper, to be considered and determined by this court, or by any municipal court, but that the said questions are diplomatic or political, and Congress has no power to authorize a court to consider said questions as against the powers and discretions appertaining to the Executive Department of the Government of the United States; that the United States have no such interest in the matters alleged in the bill as will enable them to maintain this suit or entitle them to the relief; that the Government of Mexico is the party interested in this suit, and at all times since the discovery of the alleged frauds and injuries set forth in the said bill of complaint, the said Government of Mexico has had a remedy by suit against the alleged wrongdoers in the courts of the United States for the annulment of the said award, that by failing to prosecute such suit the Government of Mexico has been guilty of laches, and has forfeited all rights to relief in equity, and that, therefore, the United States is not entitled to demand such relief for the benefit or in the interest of Mexico in this suit.

It is further averred that the mixed commission which met under the treaty of July 4, 1868, is recognized by the law of nations and by the Constitution and laws of the United States

as a court of exclusive and final jurisdiction, and that an award of such a commission is recognized by the law of nations and by the Constitution and laws of the United States as a judgment of a court belonging to the judicial system of the Government of the United States, and can not be set aside by a municipal court of the United States; that Congress can not grant a new trial in respect of matters determined by arbitration under such a treaty. Such an award can, on the part of the United States, be reopened only by action of the treaty-making power of the Government, and that the question presented by the complainant's bill is *res judicata;* that it appears on the face of the bill that the question is the same question that was tried by the commissioners under the treaty of July 4, 1868; such fraud and fraudulent practices having been charged by the Mexican agent and commissioner at the trial is *res judicata*, and can not be reexamined and redetermined by this honorable court.

It is also alleged the act of Congress under which this suit is prosecuted is unconstitutional on the further grounds that it assumes and undertakes to direct, control, and bind the courts in adjudicating the question submitted for the final adjudication of the courts named in the act; to receive evidence and apply legal principles to the said adjudication which are erroneous and wholly inadmissible according to law as administered in the courts of the United States in like cases; and such act undertakes to prescribe to the courts what weight and effect they shall give to the evidence, and how the courts shall reach the conclusion that said award was obtained in whole or part through fraud; that inasmuch and because the questions presented by the complainant's bill are of a political and diplomatic nature, and not justiciable, or fit and proper to be considered and finally determined by a municipal court, Congress can not impose upon this honorable court, or upon the Supreme Court of the United States, or upon the judges thereof, the trial and determination of such questions.

Said act of Congress is void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval which it ever received being on the 28th of December, A. D. 1892, when Congress was not in session, both Houses of Congress having adjourned on the 22d of December, A. D. 1892, to the 4th of

January, A. D. 1893; that the complainant's bill of complaint does not set forth facts sufficient to constitute a cause of action or to warrant this honorable court in granting any relief in the premises.

Wherefore, these defendants do demur thereto, and humbly pray the judgment of this honorable court.

The bill of complainant is very peculiar in form, and presents the anomaly of a pleading embracing by direct allegation (and by exhibits "which are made part of the bill" and asked to be considered as being directly averred) more than three hundred pages of closely printed matter. The demurrer, except for the purpose of demurrer, expressly reserves any admission of the truth of the allegations of the bill. But treating the bill as sufficiently definite and appropriate to accomplish the purpose of the statute conferring upon the court jurisdiction, and regarding the demurrer as sufficient to present the questions of law indicated by the demurrer, we proceed to consider the case upon the issues presented by the record.

This is one of the most extraordinary cases that has come within the jurisdiction of this court, either from the general law or by special act of Congress. In form, it is a suit between the United States and the Mining Company, and such persons as may have acquired an interest by assignment from the company. The United States have no pecuniary interest in the result of the proceeding, but, as a sovereign, are interested in preserving the rights of its citizens as they may be affected by the acts of a foreign government; and in the honor of the Government in not enforcing the payment of an unjust claim against one of the great family of nations. Aside from the question of national duty upon the part of the Government of the United States, the real parties in interest are the Republic of Mexico, La Abra Mining Company, and such citizens of the United States as have a pecuniary interest, by assignment, in the enforcement of the award against the Government of Mexico.

From the time the Government of the United States became aware of the fact that Mexico disputed the justice of the claim (after the award of the umpire), it has been most solicitous to deal justly between the parties, and has withheld from payment to the company a sum sufficient to indemnify Mexico against any fraud which may have been committed beyond what was

thought to be the substantial bounds of the loss of the company, as it may have existed in fact. The Mexican Government has sought, by an application to the United States for a new convention and treaty, to retry the cause, in the hope that it might by the introduction of new evidence, before another commission, lessen, if not entirely reverse, the judgment or award in favor of the company; but that application was unsuccessful, the Senate of the United States not concurring in the policy of again submitting the question to a new arbitration. The subject-matter of this controversy had been considered in all the branches of the United States Government, the legislative, executive, and judiciary, before it reached this jurisdiction by the terms of the act of December 28, 1892; and many conflicting theories and opinions have been held and promulgated, both in relation to the justice of the claim and the power and duty of the United States to deal with the funds still held as a residue of the award. It has a history written in the proceedings of Congress, decisions of the highest court of the land, and in the action of the executive branch of the Government as it has been advised by the opinions and reports of able Secretaries of State.

The bill, in substance, is an allegation that the award is the result of fraud on the part of the company; and that, upon a retrial, the fraud will be shown. To the relief sought because of such alleged fraud, the defendants interpose, through the medium of the demurrer, many objections which will now be considered as they appear upon the face of the record.

Preliminary to the consideration of the question of jurisdiction, which is the first point raised by the demurrer, it may not be amiss to consider the delicate and responsible ground upon which we tread in the discussion and determination of that question. Underlying this controversy is a convention, a treaty, made between two independent and sovereign nations, in settlement of claims and contentions which, without such convention, could have been settled only by an appeal to arms, and the consequent infliction on both parties of the terrible consequence of war. Against the protestation of the party entitled to the residue of the award, the question of its fairness and integrity is collaterally submitted to this court, and we are called upon, in effect, to pass judgment upon the binding force of the finding and award of a mixed commission

sitting to decide upon international claims between independent and coordinate nations.

Arbitration as to international controversies is among the achievements of modern civilization, and is the result of that progress which regards the normal condition of nations in their relations to each other as a state of amity and friendship, instead of enmity, hatred, or ill will. The law of nations, under which it is practicable to settle disputes without the conflict of war, is a result of that growth which nations have made from the barbarism of the past to the enlightenment of the present.

"The principle of the settlement of international difference by arbitral commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitration depends so essentially upon the certainty and finality of its decision, that no government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion." (Attorney-General Evarts's opinion.)

Aside from the general law applicable to the decision and judgment of the arbitrators, in being obligatory upon the parties submitting the question to arbitration, it is expressly provided in the treaty, "The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the commissioners conjointly, or of the umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them, or him, respectively, and to give full effect to such decisions without objection, evasion, or delay whatsoever." It is a general and fundamental principle of the law that the award of an arbitration whether sitting between individuals or nations, in the absence of fraud or mistake, is binding upon the parties to such arbitration. The obligatory efficacy of its judgment is implied in the very existence and purpose of its creation and being. It is organized and commissioned to settle disputes by the ascertainment and recognition of the rights and duties of the respective disputants; and to accomplish that purpose it must have impressed upon its findings the quality of finality. But like all general rules it is subject to qualifications and exceptions, and within those exceptions and qualifications the finality of a judgment may be questioned.

Upon the part of the complainants we are told that the position of the defense as exemplified in the demurrer, and

elaborated in the argument of counsel, calls upon the court to delare unconstitutional an act which passed the branches of Congress almost unanimously, received the sanction of the President, and which, from its declared purpose, subserves a great public interest in relieving the executive branch of the Government in the discharge of a very important duty toward the Republic of Mexico, and the disposition of a trust, recognized by the act of 1892, in a citizen of the United States. Upon the part ot the defendants we are told that in the exercise of an assumed judicial power we are encroaching on the domain of the political and international function of the Government; that we threaten to disturb and destroy an award most solemnly made by a mixed commission in the discharge of the highest functions and prerogatives of international law; that the exercise of judicial power through the medium of domestic courts upon the part of one of the parties encroaches upon the integrity of such commission, in violation of international law, as recognized and adopted by this country in the Constitution of the United States. It will be seen by the statement of the issues how important and delicate is the judicial trust which we assume and discharge. The importance of preserving the fundamental law in the legislation of Congress, and the preservation of political power and international questions from the consideration of the judiciary, can not be overestimated.

The consideration of the question of jurisdiction as raised by the demurrer and argument of counsel for the respondents involves the constitutionality of the act under which the bill was filed, and by virtue of which this court has proceeded thus far in the case. It being the expressed purpose of the act to confer jurisdiction on the court, if no jurisdiction is conferred it is because Congress exceeded its constitutional power in the passage of the act of December 28, 1892. The law provides a very complete, plain, and ample jurisdiction, to deal with the subject-matter of the controversy, in the broadest scope and exercise of judicial authority. The first and second grounds of demurrer, substantially stated, are, that this court, nor any other court, has jurisdiction of the subject-matter of the complaint, and that it is within the exclusive control of the executive department of the Government; that the questions presented for the decision of the court are not justiciable questions,

but diplomatic in their nature, which Congress has no power to authorize the Court of Claims or the Supreme Court of the United States to finally adjudicate. If the doctrine stated by these objections be correct in principle, it follows as a logical necessity that the act of December 28, 1892, is unconstitutional, and this court is without lawful authority to go beyond the decision of the question of jurisdiction.

The court in this connection is not unmindful of the sacredness of international arbitration, and the binding force of its judgments upon the parties to its records; but do the proceedings contemplated by the statute of 1892 lessen the force and respect due the awards and judgments of a mixed commission sitting in the settlement of an international claim? Mexico has performed and discharged every duty it was bound to perform in relation to the award made by the tribunal. It has paid the last installment, and the money is now in the possession of the United States. It paid the money in the discharge of the debt created by the judgment of the arbitration. It is conceded in the demurrer that it is within the right of the United States to agree to a new convention, with power to retry the whole case upon any and all grounds of dispute; but that the award can not be attacked, collaterally or directly, by a less power than the one from which it emanated. The complainant, upon the other hand, says the law, bill, and decree, if in pursuance to the prayer, do not attack the integrity of the award, and that the award, as such, is above and beyond their powers and purposes; that the award as a matter of law is unaffected by the proceedings authorized by the act of our jurisdiction.

The United States Government is the moving party in questioning the justice of the award, by the passage of the act of 1892, and in the prosecution of the cause against the company in pursuance to the powers of that act. It is the party in whose favor the award was made who attempts to inquire, in the form of this proceeding, as to whether the award in good conscience ought to prevail to its full consummation. Can it be said, where one of the powers to an arbitration questions an award in its favor, that it is doing violence to that sanctity and sacredness which, from the policy of international law, surrounds the findings of an international tribunal? Nations and states are the only parties to an international tribunal, and so long as they keep faith with each other, in abiding by the

judgments and decrees of the common tribunal, the great purpose of compromise and settlement, by diplomacy, and not war, is accomplished. If the United States have become suspicious of the fairness of what they recovered from Mexico, there should be some way in which they can satisfy themselves on that point; and if it can be accomplished by a new convention, can not the same end be reached in some other mode? If Mexico had failed and refused to comply with the decree of the tribunal in the payment of the money, and was seeking some forum, against the protestation of the United States, to attack and nullify the award, it would be open to the objection of disregarding its duty as one of the contracting parties, and by those acts would not only violate an express provision of the treaty, but would be disregarding that higher law which, in the policy of modern civilization, protects as sacred the results of international commissions. If the rights of the person for whose property or grievance the award was obtained can in the exercise of a discretion upon the part of the sovereign be subjected to a new inquiry through the medium of a new commission, can not the sovereign adopt some other mode of inquiry, if it desires to be more fully satisfied? Will the fact that the United States have sought to inquire through the instrumentality of a judicial investigation as to their duty in relation to the proceeds of the award impair the international force and dignity due the result and labors of the commission which sat under the provisions of the treaty of 1868? It seems to us that the passage of the act of 1892, and the proceedings under it, are not liable to that objection.

The constitutionality of the law and the consequent legality of the proceedings under it are to be determined, in a great measure, by considering and deciding the duty of the Government in relation to the right of the company in and to the claim which it alleged against the Republic of Mexico, and the relation of the company to the proceeds of the award received by the United States by the judgment of the commission. It is sought to be maintained by complainant that originally the Government was possessed of all the property in the money obtained from Mexico, that it received and held it as a sovereign, unaffected by any trust of property in behalf of the defendants, that as sovereign it has a perfect and legal right to deal with it as such sovereign,

irrespective of any claim of the defendants, "that the specific money whose disposition is directed by the act of Congress of December 28, 1892, to be determined by this suit, were moneys of the United States and were not, before the passage of that act, subject to any right, legal, equitable, or moral, of defendants thereto." As counter to this proposition, the defendants seek to maintain that the Government relations to this award is that of trustee, and that the defendants are beneficiaries, or *cestui que trusts*, and that upon the recovery of a gross sum upon the part of the United States, including the claim of the company, a right became inherent in the company, amounting to property, and that such property is not subject to the judicial jurisdiction provided by the terms of the statute. Upon this branch of the controversy both parties cite the two cases which have been in the Supreme Court of the United States, having as the subject-matter of dispute the alleged right of the defendants to money still in the possession of the Government. (*Frelinghuysen* v. *Key*, 110 U. S., 63, and *Boynton* v. *Blaine* 139 U. S., 306.)

In connection with this branch of the controversy, it was conceded on the part of the defense that if the company has no vested right of property in the award or its proceeds. it was then within the constitutional power of Congress to pass the act of 1892, and the defendants have no right to complain. The question in issue in this branch of the case turns upon the inquiry, whether the United States was, prior to the act of 1892, a sovereign, exercising only the political responsibility of a sovereign toward its citizens, or a trustee clothed with a duty to be performed in the recognition and protection of a property right in behalf of the defendants. In the case of Frelinghuysen, *supra*, it is said: "The treaty, when made, represents a compact between the governments, and each government holds the other responsible for everything done by their respective citizens under it." * * * "Thus, while the claims of the individual citizens were to be considered by the commission in determining the amounts, the whole purpose of the convention was to ascertain how much was due from one government to the other, on account of the demands of their respective citizens." * * * "International arbitration must always proceed on the highest principles of national honor and

integrity." * * * "No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances." * * * "None of the cases cited by counsel are in opposition to this. They all relate to the dispositions to be made of the proceeds of international awards after they have passed beyond the reach of the governments and into the hands of private parties."

The case of *Boynton* v. *Blaine* (139 U. S., 306) was a proceeding in mandamus to compel the Secretary of State to discharge what was alleged to be a mere ministerial duty in the execution of a trust in behalf of the petitioners. In the decision of that case, on appeal, the Supreme Court sustained the Supreme Court of the District of Columbia in refusing the writ of mandamus. The opinion of the court quotes very largely from the opinion in the Frelinghuysen case; and as to the contention of the claimant that the Government had not now and never had any interest in the funds, and that the rejection of the new treaty by the Senate ousted all jurisdiction and control by the President, the court said that those propositions had been disposed of by the decision in Frelinghuysen *v.* Key and that the court had no disposition to recede. That opinion quotes with approval "as between the United States and the claimants the honesty of the claims is always open to inquiry for the purpose of fair dealing with the Government against which, through the United States, a claim has been made." In reference to the act of 1878 the court said: "Congress in furnishing the auxiliary legislation needed to carry the results of the convention under consideration into effect, requested the President to so far investigate certain charges of fraud as to determine whether a retrial ought to be had. This inquiry might have resulted in reopening the awards as between the two nations, or in such reexamination as a domestic forum as would demonstrate whether the honor of the United States required a different disposition of the particular amounts in question." * * * So long as the political branch of the Government had not lost control over the subject-matter by final action the claimant was not in a position, as between himself and his Government, to insist on the conclusiveness of the award as to him."

Opinion of the court.

In speaking of the disposition of the Frelinghuysen case and the act of 1878, the court says: "On the contrary, that control was expressly reserved, for it was made the duty of the President, if of the opinion that the cases named should be retried, to withhold payment until such retrial could be had in an international tribunal, if the two Governments so agreed, or in a domestic tribunal if Congress so directed, and at all events until Congress should otherwise direct. The fact that a difference of view as to whether the retrial should be international or domestic, may have arisen and led to delay, or that such difference may have existed on the merits, does not affect the conclusion. The inaction of Congress is not equivalent to a direction by Congress. The political department has not parted with power over the matter and the intervention of the judicial department can not now be invoked."

Upon the question of the character in which the Government acts in the presentation and enforcement of claims of the citizens, the counsel for the complainant relies on the case of *Rustomjee* v. *The Queen* (L. R. 1, Q. B. div., 487, L. R. 2, Q. B. div., 69).

In that case it was held "that petition of right would not lie by one of the British merchants to obtain payment of a sum of money alleged to be due to him from one of the Chinese merchants." In the treaty the sum of $3,000,000 was paid by China to England as part of the proceeds of an international arbitration in satisfaction of certain claims due British subjects for wrongs committed against their property while resident in China. The sum was paid in gross, but the claim in question constituted a part of the basis on which the allowance of $3,000,000 was made. On appeal the judgment of the court below sitting in division was affirmed, the court of appeal holding (1), "That there was nothing in the terms of the treaty to make the Crown an agent or trustee in respect to any specific sum for the supplaint or any other person." (2). "That in all that relates to the making and performing of a treaty in the other sovereign the Crown can not be either a trustee or agent for any subject." The Chief Justice in his opinion says: "To say that the Queen was agent for any person seems to me to be utterly unfounded upon any authority whatever."

In the very able briefs of the counsel for the defendants they cite many cases tending to show that the company has a

right of property in the award made in favor of the United States, a part of it being for the amount allowed the company, all of which we have carefully considered and some of which we proceed to examine. The leading cases in that connection were no doubt considered by the Supreme Court in the two cases referred to, and the court remarks that they related to "the disposition to be made of the funds after they had passed beyond the reach of the Government into the hands of private parties." In the case of *Comegys* v. *Vasse* (1 Pet., 193) there was a contest between the bankrupt Vasse and the successors to his assignee in bankruptcy, after the payment of the funds into the hands of such successors. We have been unable to find a case in this country in which the controversy was between the Government and the citizen, except the two cases cited in the Supreme Court. In the case of *Phelps* v. *McDonald* (99 U. S., 298) the money, it is true, was still in the hands of the agent of the British Government, to whom it had been paid by the United States, and the Supreme Court recognized the right of parties to litigate as to it, before it had actually passed into the custody and control of private parties; but the proceeding did not affect the United States or the English Government, which might have dealt with the money as their interest or duty might dictate, without reference to the suit.

That the Government in this country may become a trustee under certain conditions of the law is well established. It has been held by the Supreme Court that with reference to the proceeds of captured and abandoned property it may become by provisions of law a trustee. In the case of *United States* v. *Klein* (13 Wall., 128) it is said "the act of March 12, 1863 (12 Stat. L., 820), to provide for the collection of captured and abandoned property within insurrectionary districts within the United States, does not confiscate or in any case absolutely divest the property of the original owner, though disloyal. By the seizure the Government constituted itself a trustee for those who were entitled or whom it should thereafter recognize as entitled." *Haycraft* v. *The United States* (8 C. Cls., p. 483).

That a debt due an American citizen from a foreign government is property, and can not be taken without the right of compensation, is well-established law. *Mead* v. *United States*, (2 C. Cls. 224).

Opinion of the court.

The case of *Judson* v. *Corcoran* (17 Howard, 612) is cited by counsel for the defendants as establishing the doctrine that the award in this case created a legal title to the money in the company. That case was undoubtedly before the Supreme Court in the case of Frelinghuysen *v.* Key, and so was the opinion of the Attorney-General in the *Gibbs Case* (13 Opinions 19). In the case of *Judson* v. *Corcoran* the contention was between two innocent assignees of a portion of the same claim, and the court held that Corcoran's right was superior, because it was supported by a legal title, based upon the award of the commission appointed to settle the claims of citizens in the fund paid to the United States under the fifteenth article of the treaty of Guadalupe Hildalgo made on the 30th of May, 1848. It was not the award of the mixed commission, but a domestic commission, organized by the sovereign to settle disputes growing out of conflicting claims to the fund. The Supreme Court in the two cases of Key and Boynton did not consider that the case of Judson *v.* Corcoran had gone to the length of holding that La Abra and Weil had a legal title to a portion of the fund recovered from Mexico. The theory of the court in both cases is adverse to such a conclusion.

The duty of the United States with reference to the claims of its citizens upon foreign governments, is well stated by Judge Davis in the opinion in the case of *Gray* v. *United States* (21 C. Cls., 392), where it is said, "That any government has the right to do this (bar by treaty the right of American citizens against France in exchange for release by France of the United States from international obligations to France) as it has the right to refuse war in the prevention of a wronged citizen or to take other action which, at the expense of the individual, is most beneficial to the whole people is too clear for discussion. Nevertheless, the citizen whose property is thus sacrificed for the safety and welfare of the country has his claim against that country and he has a right to compensation which exists even if no remedy in the courts or elsewhere be given. A right often exists where there is no remedy and a most frequent illustration of this is found in the relation of the subject to his sovereign, the citizen to his government."

So far as the defendant La Abra Company is concerned, the purpose of the treaty of 1868 is not yet accomplished, and with its purpose the United States are still dealing as a

sovereign. When the company made application to the Government to collect its claim against the Republic of Mexico, it did so subject to the duty of the United States to protect its citizen against the encroachments of every foreign power; but subject also to the wise and judicious discretion which the nation had a right to exercise under all the circumstances, in determining its duty to itself, the citizen, and the Government of Mexico. The Government had a right to be satisfied as to the justice of the claim before it demanded satisfaction, either by payment or arbitration, and, if satisfaction was not given, it had a right to consult its own ability and resources in deciding the question of the employment of force in the vindication of the right of the citizen. The sovereign right to determine everything connected with the claim is commensurate with the whole duty of the Government in the premises; and if at any time before the consummation of the transaction it becomes satisfied of the falsity and injustice of the claim, it is not only the right, but the duty of the Government to abandon all further action in behalf of the citizen.

After the rendition of the award, and while the Government is in possession of the money, if from representations made by the power from which the money was derived, the Government becomes suspicious of the justice of the claim upon which the award was made, it then becomes the duty of the sovereign in the discharge of its obligations, as prescribed and recognized by not only international law, but all law incident to civilized nations, to seriously inquire and ascertain its duty not only toward the citizen, but toward the Government from which the money has been derived. It has been conceded that the United States have a right to retry the case before a new commission under a new treaty, but that in no other form can they affect the integrity of the award. If the United States deals with the results of the commission which sat under the treaty of July 4, 1868, as a sovereign, and not as a trustee representing rights of property, then can not they adopt such measures of inquiry as to them seem most expedient to accomplish the desired end?

It is insisted that the proceeding authorized by the act is lacking in the qualities of a law suit; that it is deficient in the necessary elements of a judicial investigation; that it is the creation upon the part of the legislature of a subject-matter

which in its nature is not and can not be made justiciable, that the domain of judicial power as to subject-matter is well defined in and by the law, as recognized by the Constitution, and that domain can not be changed by legislative authority without peril and damage to the coordinate branches of the Federal Government.

In support of that theory, we are cited to two cases in the Supreme Court, the first of which is the case of *Hayburn*, reported in 2 Dallas, p. 409. That was a proceeding in mandamus, to compel the Circuit Court of Pennsylvania to put the name of Hayburn upon the pension list, in pursuance of the provisions of an act of Congress of the 23d of March, 1792. The Supreme Court declined to entertain jurisdiction of the petition, because the act imposed upon the Circuit Court, the performance of a duty which in its nature was not judicial. The court in substance decided that by the Constitution the Government of the United States is divided into three branches, that it is the duty of each to abstain from encroachments on the others, that the legislative can not constitutionally assign to the judicial the performance of any duty not strictly judicial, and that the duties assigned the Circuit Court under said act not being judicial in their nature, the court was not bound as a court to perform them.

In the case of *Murray's lessees et al.* v. *Hoboken Land and Improvement Company* (18 Howard, 282) the court after the statement of the contention of the counsel, which was that "the fact that Congress has enabled the District Court to pass upon it is conclusive evidence that it is a judicial controversy," says, "We can not admit the correctness of the last position. If we were of opinion that this subject-matter can not be the subject of a judicial controversy and that consequently it can not be made a subject of judicial cognizance, the consequence would be that the attempt to bring it under the jurisdiction of a court of the United States would be ineffectual." If the coordination of the three branches of the Government is the correct theory of the nature and character of the Federal Government, then it follows that the legislative branch by the passage of a law can not take from the other branches any of their constitutional power and jurisdiction. The judicial department of the Government as such by its consitution is intrusted with

a subject-matter of jurisdiction, which fundamentally embraces such controversies and contentions as are applicable to the individual rights of the citizen, either of property, liberty, life, or reputation; while the other departments are intrusted with the broader but not more important questions of public policy, political and international action. If the duty of the United States with reference to the award of the commission is purely political, and can not by the exercise of constitutional authority upon the part of the legislature, become the subject-matter of personal right upon the part of a citizen, then the jurisdiction sought to be given to the court under the act of 1892, is lacking in the essential quality of a judicial proceeding, and the demurrer should be sustained upon the ground that the act is unconstitutional.

The Supreme Court has from the earliest period of the Constitution most jealously guarded the jurisdiction of the courts, and during the first seventy-five years of the Government five acts of Congress were declared to be unconstitutional, all of which related to the jurisdiction of the national judiciary.

It will be seen by a reference to the cases—*Hayburn Case*, (2 Dall., 209), *United States* v. *Yale Todd* (13 Howard, 52), *Marbury* v. *Madison* (1 Cranch, 137), *United States* v. *Ferreira* (13 Howard, 40), *Gordon* v. *United States* (2 Wall., 561)—that in every instance the enactment of the statute was an effort upon the part of Congress to increase the jurisdiction of the courts by requiring of them the performance of a duty which in itself was not judicial. It is a most remarkable coincidence that in all of the cases the unconstitutionality of the acts grew out of an increase rather than a diminution of the jurisdiction of the judiciary. It happily illustrates that broad and generous confidence which the popular branch of the Government has reposed in the more limited department, in not regarding its jurisdiction with selfish jealousy.

In this connection we are brought directly to consider the provisions and purpose of the act of 1892. In 1877 the political branch of the Government found itself in the possession of a large amount of money, which came to it through the medium of an award of a mixed commission; the basis of that award was a claim which belonged to citizens of the United States; the power from which it was obtained alleged that the

award in favor of the United States had been procured by fraud; that its retention and distribution by the United States would be in violation of that good faith which from the requirements of international law should always subsist between nations; and in consideration of the premises, the power paying the money asked that the question of its liability might be examined in some form, not as a matter of right in resistance to the judgment of the arbitration, but as a matter of grace and favor. The Government of the United States became most seriously impressed by the gravity of the charge and the evidence to sustain it; and in the exercise of its powers and duties as a sovereign determines that it will inquire as to the truth of the charge of fraud, and from the result of that examination discharge its duty to itself, as the sovereign of the citizen, and to the Republic of Mexico. Can there be any serious question as to the obligation and duty of the Government if while it has the control of the fund, it becomes suspicious of the justice of the judgment which it has recovered against Mexico?

The Government, in pursuance of what it believed to be its duty in the premises, passed the act of June 18, 1878 (20 Stat. L., 144), which provides: That the President is requested to investigate any charges of fraud presented by the Mexican Government as to the cases of Benjamin Weil and La Abra Mining Company, and if he shall be of the opinion, "That the honor of the United States, the principles of public law, or considerations of justice and equity, require that the awards in the cases of *Benjamin Weil* and *La Abra Silver Mining Company*, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case, or cases, shall be retried and decided in such manner as the Government of the United States and Mexico may agree, or until Congress shall otherwise direct."

That statute became the subject of judicial review in the two cases of Frelinghuysen v. Key and Boynton v. Blaine, and in both cases it received the sanction of the Supreme Court as constitutional and proper legislation.

It was held in the Frelinghuysen case, as to the act of 1878, "That it was only an expression of the desire of Congress to

have the charges investigated, but did not limit or increase the executive powers in that respect under preexisting law." (*Frelinghuysen* v. *Key*, 110 U. S., 64.)

The act of December 28, 1892, is an act to amend and enlarge the act approved June 18, 1878, and carries out the general policy of investigation as recognized by the act of 1878. In the view which we now take of the decision in the case of Boynton v. Blaine, we eliminate from the consideration of this case all speculation upon the subject of whether the United States is a sovereign or trustee; whether the company has a vested right of property in the fund, or award, and whether the claim is in abeyance or in esse, and place our conclusion as to the legality of the act of 1892 upon what is said in that case.

The court, in the conclusion of the opinion, held in substance that so long as the political branch of the Government had not lost control of the fund, that the claimant as between itself and the Government was not in a position to insist on the conclusiveness of the award; that by the act of 1878 that control was expressly reserved, and that such control was to be kept until a retrial could be had in an international tribunal if the two Governments so agreed, or in a domestic tribunal if Congress so directed. It seems to us that the very legislation which the Supreme Court anticipated in its decision as the outcome of the legislation of 1878 followed in the legislation of 1892. The last-named act provided a more effective and appropriate form of investigation than could be instituted under the act of 1878 by the President, in converting the process of investigation into the judicial forum; and one of the recitals in the act is "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence, or compel the examination of parties and witnesses."

By the act of 1892 the United States recognizes the fact of the claim of the company to the unpaid portion of the award, and by that recognition establishes in the company the existence of a right, which becomes the subject-matter of judicial cognizance by the fact that it is recognized; and by the force of the statute it passes from a mere grace as against the sovereign to a right susceptible of justiciable determination.

The recognition by the United States of the claim of the

company has imparted to it the qualities of property which, as between the company and the United States for the purpose, not of determining a political question, but to ascertain a fact, is sufficient to support the judicial proceeding contemplated by the statute. Congress, by the act of 1892, declared a trust in the remaining funds for the purpose of determining the question of fraud urged by the Republic of Mexico, and conferred on this and the Supreme Court the judicial power of deciding that question. The statute provides, "to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein or as to any part thereof by fraud effectuated by means of false swearing or other false or fraudulent practices on the part of said La Abra Company." Congress having recognized the claim, there was by the force of that recognition a justiciable right which might be made the basis of judicial jurisdiction, as it is by the provisions of the act.

The act of 1892 having recognized a claim on the part of the company, equitable in its character, and Mexico, in subordination to the judgment of the commission, having questioned the justice of the claim, the Government finds itself in the condition of a trustee, having in its possession money to which it lays no claim as property, files this bill in the form of a bill of interpleader, or to quiet title, to have judicially determined its duty with reference to the money as property. The unpaid balance of the award by the act of 1892 belongs either to the company or the Republic of Mexico, and while Mexico is not a claimant, in the language of one of its communications to the State Department it is said, "not to prevent the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice to render manifest the fraud committed by the parties interested."

Aside from the constitutional question raised by the demurrer as to the right of Congress to pass any law upon the subject, the legislation is most appropriate to the condition of the fund. The Government of Mexico insists, in the language of the statute, that the award was obtained by fraud, effectuated by means of false swearing, or other false or fraudulent practices on the part of the company, and as the experience of mankind proves that the most approved form of investigation

of questions of that kind is to be found in and by the rules of investigation established by judicial tribunals, it was eminently proper that Congress in the absence of a treaty should adopt the judicial form of inquiry.

It is further specially alleged in the demurrer that the United States have no interest in the proceeding; that the Government of Mexico is the party interested; that since the discovery of the alleged fraud the said Government has had a remedy by suit against the wrongdoers in the courts of the United States; that Mexico is guilty of laches in not pursuing that remedy; that therefore the United States are not entitled to the relief sought; that the matter is *res judicata;* that the act is unconstitutional because it assumes to bind the court in the adjudication of the questions submitted; that a new trial can not be granted by an act of Congress, and that the provisions of the act are in derogation of the fundamental rights and powers of judicial authority.

We have already adverted to the relation of the United States to the fund in controversy, and the claim of the company incident to it, by the terms of the act of 1892, and it is not now necessary to enlarge upon that branch of the case. If Mexico had sought the jurisdiction of the courts of the United States, in litigation with the company, it would have been an attack on the integrity of the judgment of the commission in direct violation of the terms of the treaty and the principles of international law applicable to the results of mixed commissions. That course was at one time contemplated by Mexico, and bills were prepared for that purpose; but upon most serious objections by the Secretary of State of the United States it was abandoned.

In support of one of the objections raised by the demurrer it is contended that the terms of the statute attempts to control the "adjudication, discretion, and action of the court," and that as a result of such interference and control the judicial discretion and prerogative of the court in reaching a decree is impaired and destroyed. In support of this contention our attention is called to the case of the *United States* v. *Throckmorton* (98 U. S., 61–68).

The statute provides that "full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit, and to make all interlocutory and final decrees therein as the

evidence may warrant according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court so far as the same are applicable. And the Secretary of State shall certify to said court copies of all proofs admitted by said mixed commission on the original trial of said claim and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit."

In this connection it becomes material for us to inquire whether the investigation and trial contemplated by the act of 1892 is to be based upon such testimony as was before the commission, and such competent testimony as may be offered by either party, or whether the trial and investigation may proceed upon such testimony as was heard by the commission or the original trial.

In the Throckmorton case it is in substance decided that the frauds for which a bill will lie to set aside a judgment or decree between the same parties, rendered by a court of competent jurisdiction, are those which are extrinsic or collateral to the matter tried, and not a fraud which was in issue in the former suit.

The rule of law announced in that case is but a repetition of the doctrine of many cases, and were this an ordinary proceeding in review of the finding and judgment of a court, such cases would be applicable; but the trial and investigation provided by the law of 1892 is not subject to the rules applicable to proceedings in chancery to set aside a judgment or decree.

The case is to proceed upon "the proofs admitted by the mixed commission in connection with such competent evidence as may be offered by either party," and the court is to consider the whole evidence in arriving at a conclusion as to whether the finding of the commission was procured by fraud on the part of the company. It is not a trial upon newly discovered evidence in the technical sense of the law, but upon the whole evidence such as has been offered and such as may be offered.

The United States by the act of 1892 suspended their relation to the fund as a sovereign; and by the terms of that act recognized a right in the defendants, but subjected that right to the provisions of the statute which recognizes it.

Whatever claim the defendants have to the fund in the possession of the Government is subservient to the terms and provisions of the statute, and they can not complain of its provisions, because from it proceed their rights. They are under legal obligations to become subject to the jurisdiction of the court, because they as against the sovereign insist upon a recognition and adjustment of their claim. It may not be within the power of Congress to subject the ordinary rights of property of the citizen against the will of the owner to the jurisdiction of this court; but in this case, because of its peculiar subject-matter, it is constitutional for Congress to impose the conditions and terms of the act of 1892.

As the substance of the other objections appearing in the demurrer are discussed and determined in what has been said upon other branches of the case, it is not necessary to notice them in detail.

If the court upon an examination of the cause, in the light of the original proof and such competent evidence as may be offered, should come to the conclusion that the award by the commission was obtained through fraud effectuated by false swearing or other false and fraudulent practices of said company, then it will be the duty of the court to decree that the company, its legal representatives and assigns, be barred and foreclosed from all claim to the money, or part thereof, so paid by the Republic of Mexico, and upon the faith of that finding, subject to an appeal to the Supreme Court of the United States, the President is authorized to return to the Government of Mexico the money still remaining in the custody of the United States.

Inasmuch as this opinion holds that the statute is constitutional in its entire scope, it is not necessary to discuss the question as to whether it is good to a certain extent, and would authorize the finding upon the part of the court as to the fact whether a fraud was committed in procuring the award from and through the commission.

As there is no express provision for a decree in favor of the defendants, it is objected to the statute that in that particular it is defective in the requirements of a constitutional law.

The scope and purpose of the act is to submit to the decision of the court the question as to whether the award was obtained "by fraud effectuated by means of false swearing or other false

and fraudulent practices;" and if the issue is found for the United States, then, as a result of that finding, it is made the duty of the President to return the money, but if the issue is found for the defendants as to said money, or a severable part of the same, then it is made the duty of the Secretary of State to proceed to distribute so much of the said award as shall be found not obtained by fraud.

The directions of the statute as to the character of the decree seem to be without doubt, and as the court in the trial of the cause is in the exercise of equity powers, it would find no difficulty in entering such a decree as will carry out the purpose of the statute. If the court should decide that no fraud or fraudulent practice was perpetrated by the company in procuring the award, then the decree would specifically find that fact, which would be in law a finding for the company, and upon that finding in form of a decree it would be the duty of the Secretary of State to pay the money to the company or its assignees. As to the point made in the demurrer, that the act of 1892 is unconstitutional, upon the ground that it was not legally approved by the President, reference is made to the opinion of Judge Nott, in the case of *The United States* v. *Alice Weil* (post) administratrix, submitted at the present term. This case and the case of Weil, although referred by different statutes, present the same question of approval by the President. The statutes are in exact terms except as to name, were passed and approved at the same time. Assuming as true (as we are authorized by the demurrer) the charges of the bill constituting the alleged fraud, the court overrules the demurrer on ou the question of jurisdiction and the sufficiency of the bill, and leave is granted respondents to answer or plead if they so desire by the 1st day of July.

DAVIS, J., did not sit in this case and took no part in the decision.

the language of the Constitution that such a thing could not be done, because if the President could return a bill to an officer of the House, and its delivery to such officer would be a sufficient return, the clause in the Constitution with respect of an adjournment of Congress preventing its return would be utterly futile; for if it could be returned to an officer of the House, an adjournment of Congress could never prevent its return. There is always an officer of the House, and hence that clause of the Constitution would be meaningless.

Another very weighty argument is that by common consent it has been conceded that no such power is vested in the President, and in our whole history of legislation there is but one act, the act of March 12, 1863, which has been approved after the adjournment of Congress.

The House of Representatives having been apprised that the bill in that case had been approved after the adjournment of Congress, ordered its Judiciary Committee to inquire and report whether said act was in force, and the House Judiciary Committee, on the 11th of June, 1864, reported to the House of Representatives that the act referred to, approved March 12, is not in force, and in this conclusion the committee were unanimous.

It is therefore insisted that the act of December 28, 1892, nas not the force of law.

Mr. John N. Staples was also heard for the defendants.

Mr. Robert B. Lines for the complainants, whose argument is given in the preceding case of *United States* v. *La Abra Company.*

NOTT, J., delivered the opinion of the court:

This case involves three questions of constitutional law.

The jurisdiction of the court is derived from a special act of Congress, and the defendants contend that the statute is unconstitutional and void.

The first objection goes to the President's approval of the act and raises the question whether the bill ever became a law. It originated in the Senate and passed the House of Representatives on the 14th December, 1892. On the 15th it was signed by the Speaker and the President of the Senate.

On the 20th it was laid before the President. The ten days (Sundays excepted) within which he might sign or return it to Congress, therefore, expired on the 31st December.

While the bill was still in the hands of the President Congress adjourned for the usual holiday recess. The joint resolution of adjournment is as follows:

"*Resolved by the House of Representatives (the Senate concurring)*, That when the two Houses adjourn on Thursday, December 22, they will stand adjourned until Wednesday, January 4, 1893."

On the 28th December, 1892, neither of the Houses of Congress then being in session, the President signed the bill.

The provisions of the Constitution relating to the duty and power of the President are in these words:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law."

The position of the counsel for the respondents is this:

"No power exists on the part of the Executive to approve a bill after the adjournment of the two Houses of Congress, and the approval of a bill passed by the two Houses of Congress is a legislative function, the President being for that purpose a component part of the lawmaking power, and it being only when Congress are in session that a legislative act can be performed."

In support of this position it is said that "in our whole history of legislation there is but one act, the act of 12th March, 1863, which has been approved after the adjournment of Congress;" and it is contended, concerning this single, exceptional

statute that, as the question of its constitutionality was never brought to the attention of the Supreme Court, it can not be regarded as authority for the existence of the power of approval in the President after an adjournment of Congress.

After a prolonged and careful examination of the history of the *Abandoned and Captured Property Act, 12th March, 1863* (12 Stat. L., p. 820), the court is now constrained to say that the history of the statute is decisive of the question, and that it demonstrates that the three departments of the Government, the executive, the legislative, and the judicial, have so concurrently affirmed the constitutionality of the act that the authority of the President to approve a bill within the time prescribed by the Constitution, but after the expiration of the Congress which passed it, must be regarded as now settled.

The abandoned and captured property act, from the immense and extraordinary litigation which followed it, is generally supposed to have been little more than an act to confer a new subject of jurisdiction upon this court. In fact, it was a statute of great importance and significance, which created a new kind of property unknown to international law; property, in the words of the Supreme Court, of "a peculiar description known only in the recent war, called captured and abandoned property" (*Klein's Case*, 13 Wall. R., 128), and which aggregated probably in value upwards of $50,000,000. It held out terms and assurances to the loyal people of the South; it imposed new and complicated duties upon the Secretary of the Treasury; it authorized the appointment of a great number of special agents; it prescribed the manner in which this property should be collected and sold; it authorized the confiscation of other property; it declared certain acts to be misdemeanors, and imposed severe penalties and punishments upon the persons offending; it prescribed new duties for officers in the Army and Navy, and directed that those who neglected to carry out its provisions should be court-martialed and suffer the severest of military punishments.

All that relates to the jurisdiction and duties of this court and to the rights and disabilities of the owners of the captured property are to be found in nine lines of a section primarily relating to the bonds and books of account of the agents of the Treasury. In a word, it was a statute which required the careful consideration before approval of the President, of the Secretary

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of the Treasury, the Secretary of War, and the Secretary of the Navy. Probably the three most important statutes enacted during the civil war were the confiscation act, the commercial intercourse act, and the abandoned or captured property act.

If the action of the President had passed unnoticed, except as the eyes of individual members of Congress chanced to fall upon the date of his approval, no great significance could be attached to either legislative action or inaction. But on the 16th May, 1864, the subject of the approval having been brought to the attention of the House of Representatives, the House ordered its Committee on the Judiciary to inquire and report "by what warrant or authority the act was approved on the 12th March, 1863, and whether said act is in force." On the 11th June, 1864, the committee reported, and the report was unanimous. As this is of great import and not easily accessible, it is now set forth *in extenso*.

"Mr. Wilson, from the Committee on the Judiciary, made the following report:

"The Committee on the Judiciary, to whom was referred the subject of the approval of the act of March 12, 1863, report:

"By resolution of the House of May 16, 1864, it was ordered, 'That the Committee on the Judiciary be instructed to inquire and report to the House by what warrant or authority the act entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' was approved on the 12th day of March, 1863, and whether said act is in force.'

"On the reception of this resolution the committee caused a note to be addressed to the Secretary of State asking to be informed whether, as a matter of fact, it appeared on the original files in the State Department that the act referred to was approved on the 12th day of March, 1863. In reply to this note the Secretary of State responded that the original act is to all appearances regular in every respect of form. As to the date of its approval, that of the 12th day of March, 1863, the words and figures 'Approved March 12, 1863,' are in the handwriting of the President and followed by his signature. Thus it appears from the original files in the State Department that such act was approved March 12, 1863, and this is true in fact as to the date of the approval.

"The section of the Constitution of the United States bearing upon this question reads as follows:

"'If any bill shall not be returned by the President within ten days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had

signed it, unless Congress by their adjournment prevent its return; in which case it shall not be a law.'

"The committee are informed that in the great press of business immediately preceding the adjournment of Congress on the 4th of March, 1863, the act which is made the subject-matter of inquiry by the resolution of the House was passed to the Secretary of the Treasury for examination, as it related particularly to his Department. It did not reach the President again until after the adjournment of Congress, when it was approved by him under the belief that the last clause of the section of the Constitution above quoted was designed more especially to prevent Congress from enacting laws without the approval of the Executive, which might be done by the passage of bills by the two Houses, followed by an adjournment, before the President could examine and return them, were it not for the declaration that in such cases the bills shall not be laws, and did not relate to cases wherein the Executive should approve bills sent to him by Congress within ten days, even though an adjournment should occur before the return of the bills. That there is force and plausibility in this position a little reflection will discover to any mind, but the committee can not receive it as a correct interpretation of the Constitution.

"The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment.

"Hence, if the Executive can hold a bill ten days after adjournment and then approve it, he can as well hold it ten months before approval. This would render the laws of the country too uncertain, and could not have been intended by the framers of the Constitution. The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

"The committee therefore conclude that the act referred to, approved March 12, 1863, is not in force, and in this conclusion the committee are unanimous."

The report was ordered to be printed and referred to the Committee on Ways and Means. So far as is now known to the court it was never again acted upon.

The inaction of Congress with a report of this significance before them would ordinarily indicate, negatively, that a majority of the members did not agree with the Committee on the Judiciary. But there is positive evidence of the legislative judgment.

While the members of the Judiciary Committee were considering the subject of their report there was pending in the Senate a bill which ultimately became the *Act in Addition to the*

several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, etc., 2d July, 1864 (13 Stat. L., p. 375). On the 28th May, 1864, this bill was reported to the Senate; on the 28th June it passed the Senate and went to the House. In the House a slight amendment was made, and on the 2d July it passed both Houses. Not only did Congress entitle this statute an act in addition to the abandoned or captured property act, but the first section expressly declares, "That sales of captured and abandoned property under the act approved March 12, 1863, may be made at such places as may be designated by the Secretary of the Treasury."

At the time when this act in addition was being considered in Congress, the jurisdictional period prescribed by the abandoned and captured property act for bringing suits against the United States had not yet begun; no money derived from captured property had yet been covered into the Treasury; and with the exceptions of the declaration to Southern Unionists and the appointment of Treasury agents the whole subject was as completely within the control of Congress as if the abandoned and captured property act had never been passed. If Congress agreed with the Judiciary Committee of the House in deeming the act to be unconstitutional and void, all that was then needed to cure the defect was a single clause in the act in addition, reenacting the previous statute and validating proceedings under it. That clause was not inserted.

And at this same time when the act in addition was passing through the Thirty-eighth Congress another bill was likewise being considered which became the *Act to restrict the jurisdiction of the Court of Claims, 4th July, 1864* (13 Stat. L., p. 381). This statute inhibited the court from the exercise of jurisdiction over claims for property "appropriated" by the Army or Navy, but left the jurisdiction over claims for captured property unimpaired. Subsequent Congresses in like manner recognized the constitutionality of the act. The Thirty-ninth Congress referred to the "act approved March 12, 1863," and legislated for official acts done "under authority or color of the act." (14 Stat. L., p. 328, sec. 8.) The Fortieth Congress again referred to the act "approved March 12, 1863," and repeated the questionable date of approval in two sections of the statute (15

Stat. L., p. 243). The same Congress also passed a joint resolution directing that the moneys collected under the act be covered into the Treasury (15 id., p. 251). The Forty-first Congress came to the aid of the defendants, the United States, in suits under the act, and made the most stringent regulations adverse to the claimants' right of recovery. The Forty-third Congress incorporated it in the Revised Statutes (sections 1059, 3689). In a word, Congress at various times, by public and private acts extending from the Act in Addition 2d July, 1864, to the *Act 4th June, 1888* (25 Stat. L., p. 1075), conferring upon the court the same jurisdiction which was "given to said court by the acts of March 12, 1863, and July 2, 1864," have recognized the constitutionality of the abandoned or captured property act.

Bearing in mind the facts that the act of July 2, 1864, is by its title proclaimed to be "an act in addition" to an existing statute; that its enactments recognize and enlarge the provisions of the previous act; that it was enacted by the same Congress which had come into existence when the abandoned and captured property act was approved; that it passed through both Houses of Congress soon after the report of the Judiciary Committee had been made and printed; that repeated enactments extending over a period of twenty-one years have affirmed and reaffirmed by necessary implication the constitutional existence of this suspected statute, naming it in almost every instance by the date of its approval, it must be confessed that probably there is not another act of Congress in the statute books which has been so repeatedly and so significantly recognized by the legislative branch of the Government as being one of the laws of the United States.

We now come to the judicial branch of the Government.

When the first case involving the constitutional existence of the abandoned and captured property act came before the Supreme Court the Secretary of the Treasury, who had examined the bill before the President approved it, and who more than any man in the world, except President Lincoln, had been cognizant of the fact that it was not approved until after the expiration of the Thirty-seventh Congress, had become Chief Justice of the United States. As an individual he knew everything connected with the approval of the bill which it was

possible for man to know, and as a judge it was his duty not to determine the legal rights of suitors by the terms of something purporting to be a statute if well-grounded judicial doubts existed as to the constitutionality of the act—whether indeed the statute which he was to administer as law had ever become a law of the United States. Only two years had then elapsed since the bill was approved; less than a year since the House of Representatives had ordered the Judiciary Committee to inquire "by what warrant the act was approved;" only nine months since the committee had reported that the approval was unconstitutional and the act "not in force."

The unprecedented fact that the President had approved a bill after the expiration of the Congress which passed it was fresh in his mind and undoubtedly known, apart from the date at the foot of the statute, to every judge upon the bench. On the 10th March, 1865, the Supreme Court decided this case, the Chief Justice delivering the opinion of the court and twice citing the act by its date, and resting upon it two important conclusions: that in the existing war, the capture of private property on land was "*warranted by law;*" that land captures by the Navy were not a subject of maritime prize, but must be "turned over to the agents of the Treasury Department, to be disposed of under *the act of March 12, 1863.*" (*Mrs. Alexander's Cotton*, 2 Wallace R., 404, 423.)

It may be thought that the Supreme Court never considered the question of constitutionality (notwithstanding the fact that the badge of unconstitutionality was stamped upon the face of the statute) because the point was never raised by any party litigant and the question never so presented to the court as to render its decision essential in the determination of a case. Undoubtedly there are instances where statutory provisions elude the attention of judges, and undoubtedly it is considered the part of judicial wisdom not to determine points which are not raised by counsel and made plain by argument; but there are some questions which are always before a court, questions which a court is bound to notice and bound to decide; and among these is the question of its own jurisdiction. Consent can not confer jurisdiction; the silence of parties does not justify a court in keeping silent.

The jurisdictional period for bringing suits under the abandoned or captured property act began in August, 1866. The

first cases came to trial in June, 1867. For some time it was generally supposed that no appeal would lie to the Supreme Court. In 1869 a claimant presented his application for an appeal, but this court refused to send up the record, a majority of the judges holding that as the statute provided that a loyal owner of captured property should be paid the proceeds in the Treasury "on proof to the satisfaction of the said court," it followed that the jurisdiction of "said court," the Court of Claims, was exclusive and final, and consequently that the Supreme Court was without jurisdiction to entertain an appeal. The party applied to the Supreme Court for assistance and the question was considered upon an application for a mandamus. The Supreme Court then had to consider the question of its own jurisdiction. If the statute was constitutional and operative, the court might or might not be authorized to entertain appeals; if it was unconstitutional and void the court was certainly without power in the premises.

Only five years before this, and after Chief Justice Chase had come upon the bench, the Supreme Court had done that very thing. In a case before the court neither party had chal lenged the appellate jurisdiction or questioned the constitutionality of another statute. Both sides indeed had desired that the statute should be deemed constitutional and filed arguments upholding the jurisdiction. But the court on its own motion considered the question of constitutionality and held the statute to be in excess of legislative authority and declined to entertain jurisdiction of cases coming under it; and the opinion of the court was delivered by the Chief Justice (*Gordon's Case*, 2 Wallace, 561. But see 7 C. Cls. R., 1, where the opinion of the Chief Justice is given.)

The opinion of the Supreme Court upon the right of appeal in captured property cases was delivered by one of the most experienced, careful, and conservative judges that ever sat upon the American bench, then in the forty-seventh year of his judicial service, and of whom it may be said that nothing ever escaped his judicial eye. The opinion shows that with accustomed care and caution he looked into the history of the statute and knew perfectly that the bill had passed during the last days of the Thirty-seventh Congress, and that another act, which conferred jurisdiction on the court, had passed at the same time and been approved, according to usage, on the 3d

of March. Nothing can be plainer than that the judges then had before them two essential facts—that the bill was passed by the Thirty-seventh Congress; that it was approved after the Thirty-seventh Congress had expired; and nothing can be plainer than that with those two facts before them they were then to determine whether the court had jurisdiction of cases resting wholly upon the constitutionality of the act.

Mr. Justice Nelson, in his opinion, first refers to the *Act 3d March, 1863* (12 Stat. L., p. 765), which conferred judicial power on this court to render judgments against the Government and which authorized appeals therefrom to the Supreme Court. He then proceeds to consider the abandoned or captured property act, on which, as has been said, the case before the court rested wholly. His language is significant and conclusive:

"The act providing for the collection of abandoned property in insurrectionary districts, passed March 3, 1863, under which the property in question was seized, provided, in the third section, that 'any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and on proof to the satisfaction of the said court, of the ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, to receive the residue of proceeds, after deducting expenses,' etc. This act contains no provision for an appeal from the judgments or decrees of the court. *It was passed by Congress on the same day that the act of 3d March, 1863, above referred to, was passed*, reorganizing the Court of Claims, and authorizing it to render judgments against the Government, with the right of either party to appeal to the Supreme Court, as already stated, THOUGH IT WAS NOT APPROVED BY THE PRESIDENT TILL NINE DAYS AFTERWARDS. The motion for a peremptory mandamus is granted."

In re Zellner, ex parte, 7 C. Cls. R., 137, where the full text of the opinion is given.

At the same time, and indeed on the same day, that this decision was made the case of *Nelson Anderson* (9 Wallace, 56) was likewise decided. It also related to rights acquired under the abandoned or captured property act, and the opinion contained the first construction given to the statute. The Supreme Court held that the act "inaugurated a policy different from

that which induced the passage of other measures;" that "by the act in question the Government yielded its right to seize and condemn the property which it took in the enemy's country," and that the court below was "authorized to render judgment for a specific sum." But the chief significance of the decision is to be derived from these facts: That the two cases were held under advisement at the same time; that the importance of the decision in Zellner was made known to the Supreme Court by the importance of the points determined in Anderson, and that the whole subject of the judicial construction which should be given to the act was concurrently considered and determined by two such jurists as Samuel Nelson and David Davis.

There remains another case which is even more significant.

In 1870 Congress enacted, by means of a proviso to an appropriation bill (*Act 12th July*, 1870, 16 Stat. L., p. 235), "That whenever any pardon shall have heretofore been granted by the President of the United States to any person bringing suit in the Court of Claims for the proceeds of abandoned or captured property under the said act approved March 12, 1863," "the court shall forthwith dismiss the suit of such claimant." There were other provisions in the statute, and among them one which provided that the proof of loyalty required by the act March 12, 1863, should be "irrespective of the effect of any Executive proclamation, pardon, amnesty, or other act of condonation or oblivion."

In 1871 a suit came before the Supreme Court where judgment to a large amount had been rendered by the Court of Claims in favor of the claimant for the proceeds of captured property. It appeared by the record that the claimant had been guilty of an act of aid and comfort to the rebellion. It appeared also that he had taken the oath of amnesty and allegiance and came within the operation of the President's proclamation, 17th July, 1862. The Attorney-General relied upon the act of 1870. The counsel for the claimant maintained that the act of 1870 was unconstitutional and void.

If the claimant had any constitutional right to assert, that right rested wholly upon the abandoned and captured property act. The Supreme Court decided that he had; that the title to his property was not divested by capture and was still vested

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in him. The question then recurred whether the act of 1870 was unconstitutional and void; whether it deprived the claimant of his constitutional right to be heard in a suit brought according to law—the law of the abandoned and captured property act—to recover the proceeds of his property.

Here, then, was a case of statute against statute, of constitutionality against constitutionality; of the court being invoked to declare a statute unconstitutional because it impaired rights given by a statute which was unconstitutional upon its face.

The act of 1870 was held to be unconstitutional; necessarily, though not in terms, because the other act was constitutional—that is to say, the act of 1870 was held to be unconstitutional because it took away constitutional rights vested in the claimant by the act of 12th March, 1863. It is utterly inconceivable that any intelligent court, that jurists of such breadth of understanding as the judges of the Supreme Court, could have thus had the subject of the unconstitutionality of an act of Congress before them and have decreed that it was absolutely void because of the existence of another statute which was void upon its face.

Furthermore, Mr. Justice Miller dissented from the opinion of the court, not *in toto*, but on one important point. "I have not been able," he said, "to bring my mind to concur in the proposition that under the act concerning captured and abandoned property, there remains in the former owner, who had given aid and comfort to the rebellion, any interest whatever in the property or its proceeds." All that Mr. Justice Miller had to say was, "the abandoned or captured property act is unconstitutional and void," and if it could have been maintained the whole fabric of the decision would have been shattered. He did not say so, but conceded that the act was a law of the United States. *United States* v. *Klein*, 13 Wall. R., 128.

It is now apparent that the act was subjected to the severest scrutiny in cases involving questions of constitutionality, questions of jurisdiction, and questions of the repeal, by implication, of other statutes, by Chief Justice Chase, Mr. Justice Nelson, Mr. Justice Davis, and Mr. Justice Miller. If the judicial scrutiny of four such judges did not detect the unconstitutionality of this statute it must seem as if learning and ability and training and sagacity are valueless in discharging the duties of the judicial office.

We have said of this statute that "probably there is not another act of Congress in the statute books which has been so repeatedly and so significantly recognized by the legislative branch of the Government as being one of the laws of the United States." It must now be added that probably there is not another instance in the reports where a statute has come before the Supreme Court in so many ways, and been examined from so many and such diverse points of view, and received from so many of the most eminent judges of the country such extraordinary judicial recognition.*

It should also be noted that this act opened a new field of litigation—a litigation of no ordinary character, presenting questions which had never been presented to a court before and involving large amounts. More than fifty cases appear to have been carried to the Supreme Court and decided there. Nearly sixteen hundred suits were brought in this court; nearly $10,000,000 was recovered from the Treasury. The United States were represented by many and eminent counsel, one of whom had been a Senator when the act was passed. The law officers of the Government changed from time to time, new legal ability coming to its support. Defenses of extraordinary ingenuity were interposed, so that it seemed at the time that the ability of the American bar could do no more to defend the Treasury than was done. The personnel of the courts also changed, judges coming on the bench with minds unprejudiced by previous proceedings and able to apprehend and advance new ideas. Congress also interposed to support the defenses of the Government. Million after million was paid by successive Secretaries of the Treasury. The accounting officers

*Mr. Justice Strong was appointed February 18, 1870, just before the cases of Zellner and Anderson were decided, February 28, 1870. He was on the bench when the more important case of Klein was decided, 1872, being one of the majority of the court. As he is now one of the two survivors of the abandoned and captured property period, the following letter is of historic value and significance. The italics are his own.

APRIL 23d, 1894.

MY DEAR JUDGE: I have read *and re-read* carefully your opinion in the case of the United States versus Weil et al. with much interest. It is able, remarkably thorough, and convincing. I concur heartily with it, and I thank you for sending it to me.

Very cordially, yours, W. STRONG.

To the Hon., &c., JUDGE NOTT.

asserted powers over the judgments in these cases which the Supreme Court examined and overruled. It indeed seems incontrovertible that every department of the Government for more than twenty years was alert to defend the United States in the matter of these captured-property suits, and yet that not one person ever asserted that the act was unconstitutional and void.

We come now to the Constitution itself—to its purpose, terms, and history, and consequently to the question whether the unuttered conclusion of the Supreme Court was in all likelihood a judicial inadvertence, or was well founded in the plain meaning of the great instrument and the well-considered intention of its framers.

The Constitution declares (in the event of an adjournment) that a bill shall not become a law if the President does not sign it. It does not declare that a bill shall *not* become a law though he *does* sign it. The Constitution provides for a contingency, which contingency is the nonapproval of an act after the adjournment of Congress. It declares what shall happen in the case of nonapproval; it does not declare that the same thing shall happen in the case of approval. There is neither restriction nor implication that a bill shall *not* become a law if the President *does* sign it. The theory that the approval of a bill by the President is void, though it be given within the time prescribed by the Constitution, rests wholly on this idea—*that the authority to approve and disapprove bills is legislation;* in the words of Kent, "a weapon to defend the executive department against usurpations of legislative power;" in the words of Story, a power "to negative laws."

This indeed is the only substantial reason that has ever been given for requiring the President to approve a bill during the actual sitting of Congress. The idea doubtless was suggested by the British constitution as it once existed, and the fact that the President as Chief Executive of the nation bears some resemblance to a king and is possessed in a limited degree of one of the attributes of sovereignty. But the reason is not founded in fact; the premises do not support the conclusion.

Under the historic British constitution as it once existed, the power of the Crown in matters of legislation was, negatively, absolute. The enactment of a statute required the assent of the three estates of the realm, of the House of Commons, of

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the House of Lords, of the Crown. The nonconcurrence of any one of them was as fatal as the nonconcurrence of either of the others. Hence the Crown was properly classed by English lawyers as a part of Parliament, as a part of legislative power.

Under the American Constitution the assent of the President is not essential to the enactment of a single law. His authority over an act of Congress is simply revisory and advisory. If the king did not assent, that was the end of the matter. The Constitution, on the contrary, merely secures for legislation the personal scrutiny and counsel of the man who in public estimation is, or may be supposed to be, best fitted for the task. If he does not approve, he does not forbid; he does not, in the sense of the Roman law, veto. On the contrary, he returns the bill to Congress, with his reasons why it should not become a law—reasons which are not fiats, but which are addressed to the legislative intelligence.

The Constitution then requires and commands renewed legislative action—the House to which it is returned "shall enter the objections at large on their journal and proceed to reconsider it." The only condition which the Constitution imposes upon the renewed legislation is that the bill shall be enacted by a decisive majority; "if approved by two-thirds" of each House "it shall become a law."

What this decisive majority may be within the intent of the Constitution has been, and may again be, a matter of grave consideration.

On the 7th July, 1856, the Senate of the United States decided, by a vote of 34 to 7, that two-thirds of a quorum only were requisite to pass a bill over the President's veto, and not two-thirds of the whole Senate. (Paschal, note 68). And it is understood that this has been, and still is, the legislative construction of the words "two-thirds of the House."

The Constitution declares that "a majority of each House shall constitute a quorum." Therefore it will require only two-thirds of the majority of each House to enact a law, notwithstanding the objections of the President. How small a vote this is, what a trivial impediment to legislation the revisory power of the President really is, may be seen in a single illustration. The Senate of the United States now consists of 88 members, 45 of whom constitute a quorum, and 30, two-thirds of a quorum. If these 30 approve a bill which the

President has not approved it can pass the Senate. And it is within the constitutional bounds of possibility that a bill may "become a law," notwithstanding the objections of the President, by the approval of a minority of each House, consisting of only one, or at most two, members in excess of "one-third [of the members] of that House."

Here, however, it should be said that this construction of the two-third clause has never been brought to the test of judicial determination. Another article of the Constitution likewise refers to a two-thirds vote, but uses very different language: "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds *of the Senators present concur*." A State constitution, which will hereafter be considered, likewise said, "if approved by two-thirds *of the members present* it shall become a law." Whether this diversity of language implies a diversity of intent; whether the "two-thirds *of that House*" in the one article is identical in meaning with the "two-thirds *of the Senators present*" in the other is not a question before the court, and concerning it no opinion is expressed. It is sufficient to say that, under either interpretation, the only condition which the Constitution imposes upon the enactment of a law objectionable to the President is that it shall be enacted by a decisive majority.

It is apparent, then, that the purpose of the Constitution is to secure to the people of this country the best legislation by the simplest means. Its framers being mindful of the errors and oversights which are bred in the heat and strife and divided responsibility of legislative assemblies, and which they had repeatedly beheld in State legislatures, determined to secure to the people the benefits of revision, and to unite with the power of revision the check of undivided responsibility, and to place the power in the hands of the person in whom the nation repose, for the time being, the most confidence. The so-called veto power may therefore be defined to be: An auxiliary power of revision lodged in the officer charged by the Constitution with the duty of seeing "that the laws be faithfully executed," and who within the intent of the Constitution is, in the expressed opinion of a majority of his countrymen, the greatest and wisest statesman of the day.

The conclusion drawn from the text of the Constitution that the approval or disapproval of a bill by the President is not

an exercise of the legislative power is rendered certain by referring to the history of the provision.

The well-known encomium of Blackstone upon the British constitution, in which he says, "It is highly necessary for preserving the balance of the constitution that the executive power should be a branch, though not the whole, of the legislative," and likens the Commons, Lords, and Crown to "three distinct powers in mechanics; they jointly impel the machine of government in a direction different from what either, acting by itself, would have done, but at the same time in a direction partaking of each, and formed out of all; a direction which constitutes the true line of the liberty and happiness of the community," has done much to fasten an erroneous belief upon the American legal mind. There was a time when that wonderful analysis of the laws of England was read by every law student and its statements accepted as unquestionable truths. The great commentator was well characterized by the historian Gibbon as the "orthodox Judge Blackstone." As an instructor of English youth it was his mission to uphold the prerogatives of the Crown, and he believed with his whole heart in the supreme wisdom of the constitution which he extolled.

Dealing with an unwritten constitution, which changes, but changes insensibly, the time had not then come when a professor of law in an English university could say that one of its cardinal articles had been expunged and was now obsolete. Yet such was the fact. When he was reading his lectures to young Englishmen at Oxford in 1756 the words of royal dissent, *le roy s'avisera*, had not been spoken of an English statute for sixty-four years. When he published his lectures in 1765, the legislative power of the Crown had passed out of the British constitution and was never to be exercised again. When the convention in 1787 was framing the legislative article of the Constitution it had not been exercised, as he believed, within the lifetime of the oldest member * At the time of the adop-

* "It is true, the King of Great Britain had not, as was said, exercised his negative since the revolution" [1688]. Franklins' speech, June 6, 1787. But it has been reserved for an American scholar, Hon. William Everett, Member of Congress from Massachusetts, to demonstrate that the writings of historians and constitutional authorities on the subject of the last exercise of the royal dissent constitute an extraordinary tissue of errors and

tion of the Constitution it was as distant from the men of that day as the proceedings of the convention are distant from ourselves. It existed only in theory and the pages of Blackstone. The ceremony of approving bills continued and still continues; but approval where there can be no disapproval is but a form. During the reign of Elizabeth forty-eight bills were vetoed at a single session; during the last century the royal power of dissent was exercised but once, and for the last time in 1708, and related to a Scottish bill. The members of the convention were men of profound political wisdom, struggling with real problems, that lesser men would have found insoluble, and intent on practical results which should be as little objectionable as possible to their countrymen but for the permanent welfare of their country; and it is inconceivable that, for fanciful reasons, they would have imported an obsolete relic of the British constitution which had again and again been a cause of disaster to the nation and of danger to the Crown.

Ten years before the convention assembled in Philadelphia, which in the brief period of a hundred days was to forge "the most wonderful work ever struck off at one time by the brain

omissions. Dr. Everett, after consulting thirty of the most prominent historians and text writers, finds that there is "not a single one who does not either omit all allusion to the fact or commit errors about it more or less serious; always excepting Lord Macauley, who alludes to it correctly, but very causually."

The earlier authorities De Lolme, Christian, Story, and others say that the last withholding of the royal assent was by William III in 1692; and some of them that he exercised the prerogative four times during his reign. Dr. Everett has shown that he last exercised it in 1696, and that he exercised it at least six times.

A later school of writers, Sir Erskine May, Sir William Anson, and others say that the last exercise of the royal prerogative was by Queen Anne in 1707, the instance alluded to in the text of the opinion. Dr. Everett has shown that this withholding of royal assent was on the 22d March, 1708 (new style). He has also shown that the withholding of the assent was undoubtedly by the advice of her ministers and with the approbation of Parliament. The bill was to organize the Scotch militia. After its passage and before the end of the session Scotland was threatened with an invasion by the Pretender and a state of insurrection was anticipated. The refusal of the assent was but another way of withdrawing the bill and was in no sense antagonistic to the two houses of Parliament. It attracted no attention at the time for, as Dr. Everett shows, seventeen historians, some of them then members of Parliament, do not even mention it. (See Dr. Everett's paper read before the Massachusetts Historical Society. Proceedings, 2d series, vol. v, p. 156.

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and purpose of man," the people of the State of New York framed their first constitution. The third article of that instrument is in these words:

"And whereas laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed: Be it ordained that the governor for the time being, the chancellor, and the judges of the Supreme Court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature; and for that purpose shall assemble themselves from time to time when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration, under any pretense whatever. And that *all bills which have passed* the senate and assembly *shall, before they become* laws, *be presented to the* said council for their revisal and consideration; and *if*, upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this State, that they *return* the same, together *with their objections* thereto, in writing, *to* the senate or *house* of assembly (in whichsoever the same *shall have originated*), *who shall enter the objections* sent down by the council *at large in their* minutes, *and proceed to reconsider* the said bill. But *if, after such reconsideration, two-thirds of* the said senate or house of assembly *shall*, notwithstanding the said objections, *agree to pass the* same, *it shall, together with the objections, be sent to the other* branch of the legislature, where it *shall* also *be reconsidered, and, if approved by two-thirds* of the members present, *shall be a law.*

"And in order to prevent any unnecessary delays, be it further ordained, that *if any bill shall not be returned by the* council *within ten days after it shall have been presented, the same shall be a law, unless the* legislature shall, *by their adjournment*, render a *return* of the said bill within ten days impracticable, *in which case* the bill shall be returned on the first day of the meeting of the legislature after the expiration of the said ten days. Constitution, New York, 1777, Art. III. (The italicised words in the above are used in the Constitution of the United States, verbatim, except where the plural has been changed to the singular.)"

Here, then, we find the Constitution; clause by clause, word for word. (1) That every bill shall be subject to revision. (2) That "before it becomes a law" it shall "be presented" to the revising power. (3) That if not approved it shall be "returned." (4) That when returned there shall be sent with it the "objections" there may be against it. (5) That it shall be returned to the House in which it "originated." (6) That

the objections shall be entered "at large" on the journal. (7) That the House "shall proceed to reconsider" the bill. (8) That it shall require a "two-thirds" vote to pass it. (9) That it shall then "together with the objections" be "sent to the other" House. (10) That it shall there also be "reconsidered." (11) That if it be likewise "approved by two-thirds" it "shall be a law." (12) That if not returned "within ten days after it shall have been presented" it shall likewise "be a law," "unless" the legislature "by their adjournment" prevent a return, in which case it shall not be a law. These twelve provisions, *mutatis mutandis*, were transferred to the Constitution, *in ipsissimis verbis*. The only material change which the convention made was in the two-thirds clause, from which they struck the words "of the members present" and inserted in their stead "of that House."

It is manifest, then, that the convention turned from the constitution of England to the constitution of New York. When they did so the man did not live who regarded the council of revision as the successor of the Crown, or its approval and disapproval of bills as an exercise of the royal prerogative or a legislative power. But this is not left to inference or conjecture.

On the 29th May, 1787, Randolph, speaking on behalf of the members from Virginia, "opened the main business" of the convention by commenting "on the difficulty of the crisis" and presenting a sketch of the remedy, which had been formulated in fifteen resolutions. These resolutions were used by the convention as the basis of discussion and action in determining the principles which should be embodied by proper committees in the formal instrument. "It was then resolved that the House will to-morrow resolve itself into a committee of the whole house to consider of the state of the American Union, and the propositions moved by Mr. Randolph be referred to said committee." The eighth resolution is in these words:

"*Resolved*, That the Executive, and a convenient number of the national judiciary, ought to compose a *council of revision*, with authority to examine every act of the national legislature before it shall operate, and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of

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the national legislature be again passed, or that of a particular legislature be again negatived by —— of the members of each branch."

This paper, then, *pro hac vice*, was founded on the constitution of New York.

At an early day, June 6, this question of legislative power was determined by two decisive votes. The convention adopted the principle of revision, but being mindful, as Rutledge afterwards said, that "the judges ought never to give their opinion on a law till it comes before them," and that they "of all men are the most unfit to be concerned in the Revisionary Council," struck out Randolph's "convenient number of the national judiciary" and left the power of revision in the President alone. At a later day, August 6, Rutledge "delivered in the Report of the Committee on Detail," the committee which embodied the previously ascertained views of the convention in a draft of the proposed Constitution. This section was couched in the very words of the constitution of New York: Every bill shall be presented to the President "*for his revision;*" "if upon *such revision*" he approve it, he shall sign it; "if upon *such revision* it shall appear to him improper for being passed into a law," he shall return it. On the 15th of August, with this word *revision* three times repeated, "the thirteenth section of article 6, as amended, was then agreed to" by all the States. It is this vote which is expressive of the final intent of the convention. The verbal form in which the provision stands in the Constitution was the work of the Committee on Style.

This "revisionary business," as Madison calls it, came up again and again; appears and reappears in his Journal from the 6th of June to the 16th of August; was considered and reconsidered, discussed and rediscussed. The views of members swung between the extremes of absolute affirmative power in Congress and absolute negative power in the President. The proposition of Hamilton, "to give the Executive an absolute negative on the laws," identical with the legislative power of the Crown, was rejected by ten States and supported by none. The proposition of Madison to add the judges of the Supreme Court in the "revision" of bills was likewise rejected. At last the deliberations ended where they had begun. The convention held fast to the principle of a Council of Revision and left the duties of the council in the President alone. He

was to be the Council of Revision. In the words of Madison, the convention "gave the Executive alone, without the judiciary, the *revisionary control* on the laws, unless overruled by two-thirds of each branch." *

The Constitution is not a code of administrative procedure, but a frame of government. The subject before the convention was not the paltry question, whether the President should approve a bill ten minutes before Congress adjourned or two days afterwards, but whether a power of revision should be lodged in the Executive. When that was determined affirmatively it was at the same time determined that it should be strictly a power of revision, and not a power of veto; that his assent should not be essential to the enactment of a single law. Accordingly, when it was decided that his duties should be only *revisory and advisory*, it became essential that he should inform the lawmaking power of the objectionable matter in a bill, to the end that Congress might reconsider it and remedy its errors or defects. But it was also essential that this should be done within a reasonable time, otherwise the Executive might defeat the legislative will and indirectly become a part of the lawmaking power. Accordingly, a period of ten days was prescribed, and the restriction was ingeniously contrived

* From page 541 to this point is believed to be, so far as publication goes, a new chapter in the history of the Constitution, and, substantially, a discovery of the origin of one of its provisions. In connection with it the following confirmatory letter from our most eminent constitutional scholar will be of interest to members of the bar:

ANN ARBOR, *May 10, 1894.*

The Hon. CHARLES C. NOTT:

MY DEAR SIR: I thank you for sending me a copy of your opinion in *The United States* v. *Weil et al.*, which seems to me entirely sound and right.

I thank you also for presenting so forcibly the fact that the phraseology of the constitutional provision you had under consideration was taken directly from that respecting the Council of Revision in the constitution of New York. I remember to have noticed this several years ago, but without being impressed by it as you were, and as I probably ought to have been. It only struck me as peculiarly fortunate that when the Convention had rejected the Pennsylvania plan of a Council of Revision and decided upon the Massachusetts plan of a qualified Executive veto they had before them this provision, on the same general lines as that in Massachusetts, but so exactly suiting the case that no one ever raised a question.

Very respectfully, yours,

THOMAS M. COOLEY.

so that it should execute itself; if the President should neglect both to approve a bill and to return it to Congress with his objections, it should be deemed unobjectionable.

But, again, it might be possible that when the President had examined a bill which he could not approve, Congress, by their adjournment, might have prevented him from returning it with his objections. What, then, should be done? He could not sign it because he could not approve it. If he could not approve it, and could not return it, what should be the resulting effect? The Constitution provided for the contingency by saying, "In which case it shall not be a law." But there is no provision which guards against the contingency of the President approving a bill after the adjournment of Congress. None was intended, and none was needed.

The Constitution, then, contains these provisions:

(1) It declares that if the President approve a bill he shall sign it.

(2) It declares, likewise, that if he shall not approve a bill he shall return it with his objections to that House in which it originated.

(3) It provides, by necessary implication, that the time within which the President shall sign a bill or return it shall be a period of ten days, Sundays excepted, after it has been presented to him.

(4) It declares that if the President shall neither approve a bill nor return it within the prescribed period, his neglect shall not defeat the legislative purpose, and the bill shall become a law.

(5) It declares that if, at the expiration of the time allowed, the President does not approve and will not sign a bill, and can not return it to Congress with his objections because of their adjournment, the bill shall not become a law.

Here the Constitution leaves the subject.

The usage of three-quarters of a century is easily explained. When it began there was not a telegraph, or railroad, or steamboat in the world. Therefore, that which is always desirable was doubly desirable—that the President should complete the work of revision before the dispersion of Congress. The first session of the First Congress ended on the 29th September, 1789. The statutes signed on that day no more than fill two pages of the printed laws. Congress, moreover, was free

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to prolong the session until assured by the President that he had nothing more to communicate. The second session ended on the 12th day of August, 1790, on which day there were but two short acts signed. The third session ended on the 3d of March, 1791. There was then a larger number of acts approved, the chief of which was framed by the Secretary of the Treasury, but all of them could have been scrutinized by the President within three hours, and at least one had been presented to him several days before. Succeeding Presidents for the same reason pursued the same course. President after President came to the discharge of the duty and followed the precautionary practice of his predecessors. In time practice ripened into usage. No President cared to assume a new responsibility, and all shrunk from attaching to a law of the United States the suspicion of unconstitutionality. At last the spell of usage was broken by the abandoned and captured property act, when the mind of a great statesman measured the responsibilities of situation, and his hand signed the bill.

The other constitutional questions involved have been examined by our brother Weldon in the case of *The United States* v. *La Abra Company et al.*, and his opinion will be considered as the opinion of the court upon those points in this case.

The order of the court is that the demurrer to the bill be overruled, with leave to the respondents to answer, if they so elect, on or before the 1st day of July next.

RICHARDSON, Ch. J.:

I concur in holding that the act of Congress under which this suit is brought is valid under the Constitution, because it was duly approved by the President during a recess of the same Congress in which it was passed by the House of Representatives and the Senate.

I am not prepared to go further and to express an opinion upon the question not involved in the case whether or not the President has a right to approve a bill after the Congress in which it was passed has expired.

I am impressed with the view which has prevailed and which, with the single exception of the captured and abandoned property act of March 12, 1863, has been adopted and followed in practice ever since the foundation of the Government, that the President for the time being is part of the legislative

power of each separate Congress, like the Senate, which is a continuing body, and that when a Congress expires by limitation his authority to approve bills of that Congress is gone.

If it were otherwise, an incoming President might approve bills of a Congress belonging to the official term of his predecessor, with the merits of which he is not expected to be familiar, and for the consideration of which he would not have the ten days secured by the Constitution unless it should be held that bills may be presented to the President for approval after the Congress expires, which I apprehend would not be seriously urged by anybody.

I can find no support to this new doctrine, founded on the débris of history, from the captured and abandoned property act of March 12, 1863. At the first session of the next succeeding Congress the Committee on the Judiciary of the House of Representatives, through Judge Wilson, its chairman, made a unanimous report against its constitutionality, and the act was adopted and practically reenacted (13 Stat. L., 376) before the right of parties to bring suits had commenced (*Tibbett's Case*, 1 Ct. Cls., 169). No case under it was decided by the Supreme Court until more than five years after such reenactment, when the case of *Ex parte Zellner* (9 Wall., 244) was before it, and the question was no longer an open one. Neither in that case nor in any of the several subsequent cases was the question of the constitutionality of the act argued or raised by counsel nor considered by the court, evidently because of such reenactment.

DAVIS, J., did not sit in this case and took no part in the decision.

IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY AND OTHERS. } In Equity. No. 17,917.

It is hereby stipulated and agreed by and between the undersigned that the opinion of the Mexican Commissioner, Zamacona, in opposition to the claim of the said company against Mexico, as printed in Executive Document No. 103, H. R., 48th Congress, 1st session, pages 27–41, shall be regarded and taken as included in the complainants' Exhibit "A," which is made part of the bill of complaint in this cause the same as if said opinion had been set out at large therein.

ROBERT B. LINES,
Spl. Asst. to Atty-Genl.
SHELLABARGER & WILSON and
CRAMMOND KENNEDY,
Of Counsel for La Abra Co. and other defdts.

Filed Dec. 11, 1893.

THE ABRA SILVER MINING COMPANY
vs.
MEXICO. } No. 489, A. D.

The Commissioners having differed in opinion in this case, Mr. Commissioner Zamacona delivered the following opinion:

Many in number are the claims which have been submitted to this Commission on account of damages alleged to have been experienced by the owners of mining enterprises in Mexico.

The demands against the Mexican Government on this account have a characteristic precedent in their history, and, although not the only one of its class, such was the claim of Dr. Gardner for an enormous sum which was paid him, and which it was afterwards discovered was for mines which never existed, except in the claimant's imagination.

When the damages which the mining companies at times complain of do not reach such an extreme of invention, at the bottom of them is found one of these two facts, either that the losses complained of are due to one of those disappointments so frequent in the hazardous business of mining, particularly when this is embarked in without sufficient knowledge or adequate capital, or else it is accounted for by the general disquiet of the country, and the imprudence of claimants themselves in having gone, as they state, to Mexico to engage in mining undertaking, selecting the time and place most convulsed by those civil and foreign wars of which that republic was the theater during the decade from 1857 to 1867.

If the matters submitted to our Commission are considered as an aggregate, and with an impartial and investigating spirit, they will furnish very important lessons; lessons which may be of advantage both to Mexico and to the United States.

The former may learn from them what she should in future avoid in order to give no just ground of complaint to honest and industrious foreigners, and the evil devices made use of by certain unscrupulous speculators to work on the weakness and embarrassed condition of the Mexican Republic in the setting up of international claims. The United States might on its side learn from the archives of this Commission the monstrous and exceptional extent to which claim speculations have grown in this country, and the evil influences which they must exert on public morals and the harmony of its intercourse with other nations.

The claims submitted to this Commission make a long catalogue, and the most numerous on it are those of mining companies for the total destruction of their undertakings, and among such one of the most notable is the one which heads this opinion.

The first thing which merits attention is the progressive and rapid increase of the claim from the time of its origin.

When the claimants made use of the services of only two lawyers, Robert Rose and Frederick Stanton, and these gentlemen stated their complaint to the State Department, with the request that the matter should be submitted to our examination, the amount for which the Mexican Government was alleged to be responsible was one million nine hundred and thirty thousand dollars. (See Exhibit No. 1, received by the State Department March 17, 1870.)

Some three months later, the United States having submitted the case to our Commission, the same counsel, re-enforced by a third assistant, Mr. W. W. Boyce, submitted the memorial on behalf of the company, and which appears to have been signed and sworn to on the 28th of May of the same year by Mr. Robert Rose. During this short space of seventy-two days the claim had swollen from one million nine hundred and thirty thousand dollars to three millions.

Of course, the makers of this rapid accretion took care to enter into no explanations, and not only kept quiet with regard to the letter sent a short time before to the State Department, in which the claimants designated the amount that they considered themselves entitled to, but they also abstain from stating figures, by which means the mine as a claim continued to produce more than the "Abra Mine," and in a little more than two months had suffered an increase of more than a million.

The memorial is not accompanied by any statement or account whatever; the claim is made in gross, and demands the sum of over three millions for losses and damages sustained.

Subsequently, when the brief was made, a printed copy of which was filed on the 3d of April last, it became apparent that the accretion was to be continued both as regards the number of counsel and the amount of the claim. The f rmer were now four in number, and the latter had grown to three million nine hundred and sixty-two thousand dollars.

The items constituting this enormous sum are given upon the occasion of the brief, as may be seen on page 8

and the ones following, under the head of the seventh charge. As there set forth, the items composing the three million nine hundred and sixty-two thousand dollars are stated under four heads, as follows:

First. All that was expended in the working of the mines and for the responsibilities contracted on account of the undertaking. This amounts to the sum of three hundred and forty-one thousand and seven hundred and ninety-one dollars and six cents. But as there is added to this amount, for forced loans and other charges, a sum amounting to twenty-two thousand three hundred and seventy-eight dollars, the total of the charge under this head becomes three hundred and sixty-four thousand one hundred and sixty-nine dollars and six cents. The conscientious scruples of the claimants, however, would not permit them to charge some fifteen hundred dollars for robberies committed by the imperialists, and, carefully deducting this amount, the sum thus becomes reduced three hundred and sixty thousand six hundred and ninety-nine dollars and six cents.

Second. Six hundred thousand dollars, as the value of the ores extracted from the mines, and left after they were abandoned on the 20th of March, 1868, without calculating the interest which should be reckoned from that time.

Third. One million, for what is termed a fair allowance of prospective profits, on account of the sudden interruption and utter destruction of the prosperous business of the company.

Fourth. Two millions, for what is termed a fair value of the mines in March of 1868, the time of their abandoning them.

These four amounts added together make a total of three million nine hundred and sixty-two thousand dollars and six cents, for which claim is here made.

It will be seen by the above that the claimants were fortunate in making the timely discovery that in their first application to the Secretary of State for the protection of the United States they had overlooked certain charges, which, however, might have been easily forgotten, as they only amounted to the trifling sum of two million and sixty-two thousand dollars.

It is not a slight advantage for us in examining this

bulky case to find that the claimants have stated their demands with precision.

The explanation, contained in the brief, permits us without much difficulty to strike out one considerable item of a million dollars, which is claimed for the prospective profits which the company should have made.

In a most useful book, published by the State Department of the United States, containing the treaties existing between this and other countries, together with copious notes and commentaries explaining the "interpretation, executive, legislative, and judicial," given by the United States to such treaties, among other points decided, on page 966, will be found:

> Prospective earnings cannot properly be made the subject of compensation.

The word "earnings," if the undersigned is not mistaken, embraces the idea of profits, or even goes a little farther. It therefore appears by the principle established by the Government, under whose protection the claim is submitted, that the third item of the claim should be stricken out, and the amount diminished by a million of dollars.

This same must be done with regard to the fourth charge, for the value of the mines.

The company claiming demand not only their integral value, as though the Mexican Government had appropriated them, but increase this value to two millions of dollars.

The papers in the case show that when they purchased these mines they paid a total of fifty thousand dollars for them, and it also appears that this sum, so different from the one claimed, was thought to be a high one, as both the seller and the people in the neighborhood considered the transaction a most advantageous one to the vendor.

Counsel for the company have presented the title deeds, and on page fourteen of the printed book containing the case, as arranged and translated by the plaintiff, will be found the instrument of sale executed at Mazatlan, on the 25th of September, 1865, by which the vendor, Don Juan Castillo del Valle, transferred all his right and title to the said mine for the sum of fifty thousand dollars.

Castillo del Valle, when afterwards deposing, and whose testimony shows a commendable care not to go beyond the limits of his own personal knowledge (pages 175 and 176), confirms the fact, that the price of the said mines was fifty thousand dollars, and adds, that their yield was from 80 to 100 cargas or loads per month, and at times as much as 200. This enterprise, the witness states, was never considered as productive of great profits, and only yielded enough to keep the mines in a condition to make them salable, as the translation says.

However this may be, and by what process this property, which on the 25th of September was worth fifty thousand dollars, in March of 1868 (two and a half years) had risen to the value of two and a half millions, is something which is not easily understood and which the company have not taken the trouble to explain.

There can be no doubt whatever that property, by the improvements made on it and in proportion to the amount of money invested in increasing its products, is susceptible of an increase in value. But when, as in the present case (item No. 1), two hundred and forty-one thousand seven hundred and ninety-one dollars is charged as the whole amount expended in the working and for all the responsibilities incurred in carrying on the business, this amount and the original cost constitute their total value and all which can rationally be demanded for the property.

To demand, on the one hand, the value of the improvements and the expenses incurred for carrying on the business, and, on the other, the original cost of the property, together with the cost of the improvements, is a repetition condemned alike by justice and common sense.

Again, industrial enterprises of any kind are susceptible of immense value, when by virtue of the improvements made, the capital invested, the toil expended, and other circumstances, they may have been placed in a prosperous and flourishing condition. But nothing of this kind could have occurred in the present case, because, judging from the complaints and disputes in which the company were involved for during the two and a half years of its operations, from the time of the acquisition of the mines up till the time of their final abandonment, it experienced nothing but difficulties and embarrassments. The history of the company, as related by itself, is nothing

but the uninterrupted series of struggles with the populace and authorities of the place, each vying with the other in rapacity and malevolence.

If this be true, and if the damages growing out of this persecution reach the sum of a million dollars—the third charge—how is it comprehensible that the mines could have had the immense increase in value as stated? How is it possible that under circumstances so unfavorable mines which have been purchased for fifty thousand dollars could, two years and a half later have been worth two millions?

The witness James Granger, who was in the company's employ as superintendent, does not manifest any very exalted opinion of the value of the enterprise. In his deposition (page 48) he makes use of these words: "Formerly these mines were much talked about, but now they are good for nothing." At the end of his deposition, and in reply to the question whether it was true that the mines produced a million of dollars a year, he stated with a peculiar emphasis "that they had never yielded a cent of profit; on the contrary, that they yielded a loss." It would, then, on this, be an evidence of blind credulity to accept the fourth item of the claim.

Again, why should the Mexican Government be called upon to pay the whole value of the mine, whatever this may be? If any of the Mexican authorities had without just cause taken possession of the mines, and to the injury of the owners, it would be rational to demand the restitution of the property, or payment for the same. But when it is not proven, or even alleged that the Mexican Government took possession of the mines, or anything belonging to them, they being, as the witness Granger states in his deposition of October (page 148 of the printed book), in the same state they were left by the company, the demand in question becomes not only exorbitant, but absurd. The Mexican Government can not be held responsible for property left abandoned by foreigners within its confines.

Striking out thus the third and fourth items of the account, which amount to three millions, the two which precede them remain only for examination. It will be more easy to do so by taking them up in an inverse order, that is, by commencing with the second.

This refers to the value of all the ores extracted from

the mine, and which were there abandoned in 1868. It amounts to six hundred thousand dollars.

The first thing which calls attention is the method made use of to ascertain the quantity of ores. It is not stated or proven, or even attempted to be shown, that upon such or such a date so many cargas of ores were extracted, were of such or such an amount, and so on, with regard to subsequent operations.

Facts go for nothing, and are substituted by estimates. An average is struck, not between the quantities extracted at different times, but between the statements of the witnesses, and the quantity is thus fixed at eleven hundred tons, and the value established at five hundred and fifty dollars per ton.

What would be said of a court of justice which, when receiving evidence as to a claim, and two witnesses being before it, one of these should state the amount to be two dollars and the other twenty, and the court should thereupon decide that it was fully proven that the amount of the claim was eleven dollars, because eleven is the average of two and twenty? This is the sort of logic made use of in the brief when arguing concerning the charge to which this remark refers.

In addition to the fact that in fixing this amount they did not take previous facts as a base, there is one fact which the claimant has overlooked.

According to Granger's deposition (page 147), the greater part of the ores extracted by the company was still (October, 1871) in the yard of the reducing works, and were good for nothing. All that had been extracted, and which were good for anything, had been reduced by the company. It is thus shown that the eleven hundred tons of ores left in the yard of the reducing works were worthless rock, and that they were still there in 1871, after this claim had been made.

It is as absurd to value this rock at six hundred thousand dollars as it is to hold the Mexican Government, which never had, nor is it pretended that it ever had it, responsible.

There now remains for examination but the first item of the claim, which refers to all the amounts invested in the working of the mines during the two and one-half years that the enterprise was in operation and the debt

and responsibilities incurred on account thereof. To this sum is added the amount of certain forced loans and taxes, which brings the total amount up to sixty-four thousand one hundred and sixty-nine dollars and six cents.

If this account be carefully examined, it will be found that the company claiming assume the fact that the business was one that was completely ruinous; that it absolutely produced nothing during the whole of the time that it was worked, not even a cent, as Granger expressed it. It is stated that Exall, the first superintendent, succeeded in reducing a quantity of ores and obtained seventeen thousand dollars from it, but the whole of this sum was again employed in the mine, and, with the rest, disappeared in that bottomless pit.

In addition to the fact that this furnishes new reasons for surprise at the exaggeration displayed by the Abra company in piling into their claim the millions they failed to realize out of their undertaking, it fixes the profit at one million, the value of the mines at two, and the value of the ores extracted at more than half a million (six hundred thousand), this first charge furnishes a reason which is decisive against the claim.

If the undertaking was a ruinous one, if only through rashness or ignorance could any one have invested their money in it, if the price of fifty thousand dollars paid for the mines appeared an excessive one to all the people thereabouts, and even to the vendor, why should Mexico be called upon to pay for what was so injudiciously and so imprudently risked in such an undertaking? Is the Mexican Government by chance an insuring institution, compelled or bound to indemnify foreigners for losses incurred in their wild and ill-advised speculations?

In the consideration of this claim, the undersigned has endeavored to view it under all its aspects, and even do the claimants the favor to not consider it as an absurdity, but place it in a light from which it might seem to be rational in the event of certain imputations which they more or less directly urge against the authorities were found to be true. But even under this aspect, and relieving the claim from its fabulous exaggerations, it is seen to be an imposture.

The claimant might, in fact, abandon his scale of mill-

ions, and reason in this way: The Mexican authorities injured the company either directly by persecuting and robbing it, or indirectly by inciting and sustaining the people against it instead of restraining them; consequently the Mexican Government is responsible, and it ought to make compensation for such injuries.

It might have gone a step farther, and have assumed that the total ruin of the company's business was due to these acts of aggression and hostility on the part of Mexico, and to no other cause. Even in such a case, then, the compensation could never be made extensive to what is known as vindictive damages, which to a certain extent involve a penalty against the nation on which the claim is made, nor for such damages as are of a more or less contingent or prospective character. But the claim of the Abra company is so destitute of all foundation that not even making such a transfer of it would it bear a close examination.

Upon reaching the third charge of the brief, the counsel for the company comprehended the necessity of defining facts, and have endeavored to relieve the claim from that vagueness which pervades it in the memorial and other papers in the case. They could not conceal from themselves that it was indispensable to define the injuries to which the claimants attribute their ruin, and with this view counsel have formed eleven distinct charges, or accusations, which are enumerated in their brief, and each designated by a different letter.

It would, perhaps, have been more methodical on the part of the claimant, and perhaps the undersigned would also have done better, to have distributed the said charges in the series to which they logically pertain; but in a certain sense it is preferable, even at the expense of brevity, to take each of the imputations up in its order, without altering either the idea or the accusation.

That designated by the letter A consists of forced loans alleged to have been imposed on the company.

> Préstamos were levied on the company at its hacienda of San Nicolas, one thousand dollars and upward.

This charge, even though it had been proved, would of course have to be dismissed under the decision of the umpire in case No. 348, Macmanus Brothers *vs.* Mexico. The umpire says:

> After examination of the treaties between the two countries, I can find no mention of forced loans and stipulations which accord or imply the exemption of citizens of the United States from their payment.

The point having thus been decided by the present Commission, that forced loans are not and cannot be a matter of diplomatic claim, the charge A and the following one, B, must be dismissed. But as an examination of the grounds of these furnish ample data for qualifying this demand, it will not be labor lost to extend the examination of the matter a little. The pecuniary disbursement referred to in Exhibit Z, and which will be found on page 53 of the printed book so frequently referred to, is styled a forced loan. This document is christened with the name of an order, and is submitted to us as evidence that the loan was in fact imposed. I might begin by saying that the assumed order is no proof whatever of the exaction of the money; this should be vouched for by a receipt and not an order, which may or not have been obeyed, or which may have been countermanded at the moment of its execution. But supposing that the twelve hundred dollars, the repayment of which are now demanded, were paid, can it be considered that the fact is proved by the presentation of an order to pay? If it could, Exhibit Z is not of this character; it is nothing more than a simple private and friendly letter.

It is to be regretted that in the English translation, words "private correspondence," stamped on the upper left-hand corner of the original, were omitted.

These words, as also the general style of the letter, would be sufficient to convert this supposed order into an ordinary and private letter, where a friendly spirit is stamped in every line and where prudence and not

power speak to private interests to obtain not obedience, but conviction. This letter is written by Jesus Valdespino to D. I. A. Lagual, on the 27th of July, 1866, and is as follows:

["Private Correspondence."]

MY DEAR SIR: Both Mr. Laenz and the gefe of the partido will inform you of the commission with which I am charged by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command.

But informed as I fully am of the injury which my continuance in the district would cause to its residents, and particularly those having large business and property, for the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interests of your business, and upon the sole condition that the residents of the district furnish me with twelve hundred dollars for my departure. I am confident that I take this step as the least burdensome, because if I remain here I must obtain means wherever they may be found.

But, as I have before stated, my purpose is to individual guarantees which the laws accord to the people. I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share towards completing the contribution levied by the gefatura of the partido on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant,

JESUS VALDESPINO.

The translation of this document, which is on page 53 of the printed book and was made by the claimant, is not sufficiently correct, and leads to the formation of an erroneous judgment. In addition to what has been already said as to the translator's having omitted to insert the words "private correspondence," which immediately changes its character from an official order to a friendly letter, a most important error was committed in

the translation. The text of the last paragraph of the letter says:

> Espero pues que Vd. pese con atencion mis razones y que convencido do ellas, hará cuanto esté de su parte, para dar el lleno al impuesto que la gefatura de este partido, asigna á ese punto.

This was translated:

> I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share towards completing the contribution levied by the gefatura of the partido on your place.

Valdespino did not ask his friend Lagual to complete anything, nor to complete the contribution imposed on the locality where he was. What he did was to state the situation, explain that by the sacrifice of twelve hundred dollars the people of the district might free themselves from the inconvenience of having a military force in their neighborhood, which necessarily had to live off of the country, and begging him, in view of all this, on his side, to do what was possible, in order that the place where he resided, or the mines (one only among the many which the district embraces, as the Spanish text says) should carry out the idea or plan which was recommended.

But laying aside this circumstance, the character of Valdespino's communication will be still better understood if the other one which he addressed to the gefe politico of the place, on the 27th of July, 1866, be examined. This is official in its character, is stamped, sealed, and countersigned, and translated into English on pages 158 and 159 of the English book.

In this communication Valdespino, after explaining that he is compelled to support and feed his troops, adds that the political authority has no wish to levy and tax or exact any loan. For this reason he had determined to leave the place, and in order to do so he desired to obtain from the people of the district and the towns adjoining, who were in better circumstances, the sum of twelve hundred dollars. This letter is written in the

same spirit of moderation as the other letter, and its text, without forcing, shows two things:

First. That in the measure projected by Valdespino there was no intention of violence, or any indications whatever of hostility against the inhabitants of San Dimas; but, on the contrary, it manifested strong evidences of the consideration which officers in the field do not always practice.

Second. That the twelve hundred dollars which was to be collected was not demanded (that is, if it was paid by them) exclusively from the Abra company, but that it was distributed on all people of means in the district, and on those of the towns and farms embraced in it. But a portion of this assessment could have fallen on the company, and it is not comprehensible why they should have demanded the whole twelve hundred dollars.

The second charge of the claim, B, consists in that the authorities exacted forced loans for more than three thousand dollars from the provision trains of the company.

The witness Granger (page 45) says, "Préstamos on mule trains, I have no personal knowledge." W. G. S. Clark, pages 64 and 66, says that—

> Col. Donato Guerra, of the Republican army of Mexico, and who at that time was in command of the district, levied upon the trains a tax of six hundred dollars.

Thomas G. Bartholow, page 223, says:

> I was compelled by the Republican authorities of Mexico to pay a number of préstamos, or forced loans, from three to six hundred dollars, levied upon the Abra company's stamp-mill, machinery, and supplies by the command of General Couna.

The last witness, Pedro Echeguren, recollects having heard Bartholow speak of préstamos which he, Bartholow, had been compelled to pay upon the machinery and provisions he was carrying to the mines.

These statements, instead of strengthening the claim, serve as the grounds for inferences such as were made with regard to the first charge.

Whether the sum obtained for préstamos was three hundred, or six hundred, or three thousand dollars, such exactions, if in fact they ever took place, constitute no wrong to those by whom they were paid, nor is this the court to which the parties should apply for reimbursement. In addition to all this, there is neither receipt nor account nor anything else showing the payment, and it is scarcely necessary to say that without proper vouchers this claim is out of place here in its demand for repayment.

The third charge, C, consists in the appropriation of eleven hundred and seventy-eight dollars, which was taken from George Scott, an employé of the company. Neither of the three witnesses who depose upon this point designate who the military of the Liberal army were that took this money, but although two of them state that it was a robbery by armed men, as they make use of the word "robbery," the fact appears to have been that it was another tax similar to those already mentioned. The witness Clark calls it a préstamo, and although the others call it a robbery, the circumstances under which they describe it makes the term used very improper.

It is said, page 42, that Scott had with him three thousand dollars in American gold, and of this money the one thousand one hundred and seventy-eight dollars in question was stolen. Robbers so considerate as to only take a little more than one third of what the party may have had are not often encountered. Be this, however, as it may, Mexico is not bound to answer for roberies committed on the highway.

Whether this was a robbery or a duty on circulation, according to law, it was the duty of the claimant, as the umpire has decided, to prove that the crime was committed by a body of troops under the orders of an officer whose acts involved the responsibility of the Mexican Government.

Even accepting the figures of the brief, the three said charges only amount to fifty-four hundred dollars.

In order to jump from this small beginning to the immense amount which the Abra company now demands a scale of many degrees was necessary, and the claimants were compelled to connect it with another series of wrongs.

The charge which is marked with the letter *d* consists of the murder of Mr. Gross, who was quartermaster of a provision train. There is also another marked *e*, for the seizure and confiscation at different times of the said trains, with the mules, materials, and provisions, while on the road from Mazatlan to the mines. The amount of loss caused by the death of Mr. Gross is not stated, but that caused by the seizure of the trains is estimated at a total of eighty-five thousand dollars.

The thing which first strikes us as incomprehensible is, by what rights the company claim for the death of Mr. Gross, who was nothing more than a clerk on a salary, engaged in the care of the cart train. In order to show that the personality of the alleged victim was still more independent of the company, it is further seen that at the time of the death Mr. Gross was alone, and not in charge of the train.

According to the principles established in the decision of cases No. 102, Snow & Burgess *vs.* Mexico, and No. 82, of Caroline Sprotts *vs.* Mexico, the injuries done to the agents or employés of a person or corporation are not held to be injuries done for that person or corporation. Gross was not the slave of the mining company who now claim on his behalf, nor do we know that the company is his heir or the legal representative of those who have a right to his succession.

The evidence of the homicide, however, is so vague and undefined, that two of the witnesses who deposed with regard to it hardly knew the name of the victim. The murderers are simply designated under the general terms "authorities of the republic," "soldiers of the Liberal army," and others of the same kind.

The deposition of Clark, before referred to, shows that Gross could not have been robbed of supplies in his charge. The fact of the murder not having been established, still less is it shown that it was committed by the Mexican authorities. The charge involved in this point is destitute of all foundation.

The different robberies and appropriations of property referred to in charge E are based on statements as vague as those of the murder. The dates and names are never mentioned; the witness Exall even says, "I cannot state names and dates with any degree of certainty. Mexican

names are always difficult for me to recollect." All say: "Mexican authorities, military authorities of the Republic of Mexico, Mexican soldiers." According to the decision of the umpire recently made, in case No. 52, José Ma. Anaya *vs.* The United States, this vague and general designation of persons and officers is not sufficient to fix a responsibility. No mention is made of any officers, nor is it shown that an officer was present or that the plunderers were under the control or command of any officer. If they were robbers, the Mexican Government cannot be held responsible for the losses suffered by claimants, who however, might have made a representation of the fact to the officer in authority or command, with a view to the punishment of the offenders and perhaps the recovery of the property.

Charge No. 6, F, states that the local authorities interfered with the operations of the company at times by directing them to work their mines in the manner they directed, at others, by compelling them to employ laborers who were out of employment, &c. These assertions are proved by the original documents as Exhibits V, W, X, and Y, which are translated into English and printed on pages 52 and 53. It is worth while to stop a moment and examine this evidence, which is most unmethodical in its arrangement, as if it was intended to create confusion and not clearness.

The last of these documents, which is the first in order as to date, is as follows:

> "Gefatura politica del partido de San Dimas."
>
> Por el oficio de Vd. se ha impuesto con bastante desagrado esta Gefatura de los abusos de estos señores Americanos, que habiendo convenido por primera vez pagar á los operarios en pura moneda, y por segunda pargarles mitad y mitad, y por tercera pagarles una tercera parte, haga V. presente por el *conducto* de ese Jusgado y por mi órden, *que cumplan á lo menos el ultimo contrato*, quiere decir, pagarles la tercera parte en dinero; y de lo contrario dejen las minas, que las trabajen las operarios á la manèra que quedan, pues ni la ordinanza de mineria previene que se les pagnen en puros efectos, in el gobierno consiente semejantes abusos, pues ya está consado de

recibir miles de quejas sobre este particular. Este mismo oficio le hara Vd. presente al C. Americano que haga cabeza en ese mineral.

Independencia y Reforma.

San Dimas, Junio 3 de 1867.

M. MORA.

C. INEZ GUADALUPE SOTO, *Unico Counciliador de Tayoltita.*

This document is incorrectly translated, because the phrase "de lo contrario dejen las minas que las trabajen los operarios á la manera que puedan," the exact version of which is, "otherwise, let the operatives work the mines as they can," was interpreted as an order of ejectment by writing it, "that the company were to vacate the mines and to allow the operatives to work them as they can."

The Spanish verb "dejar," which is equivalent to the English verb "to let," when used in connection with another active verb, as "dejar caer," "dejar trabajen," or "dejar que trabajen," does not signify to remove from, to dislodge, &c., nor involve any of the ideas conveyed by the English word "vacate."

The violence done to the meaning of the sentence in question above, by the translation, is shown by the fact that in the Spanish text there is but one sentence of what is called in grammar the infinitive mode—"dejar las minas que las trabajen"—the determining verb of which is "dejar" and the thing determined "que las trabajen." In English there are two different expressions, one "to vacate the mine," and the other "to allow the operatives to work them as they can." By this discrepancy what was simply a well-intentioned notice or admonition by the local authorities assumed the aspect of an act of despotism or a threat against property. The history of this matter fully shows how little truthfulness has been employed by the claimant on this point.

According to the statements of several witnesses, and among them Victoriano Sandoval, a servant of the company, the superintendent required Mexican operatives for work at the mines, offering to pay them for their labor, night or day, in cash. After he had made this arrangement with the operatives the superintendent

changed his mind and refusing to fulfill his agreement, made a new arrangement for paying them, agreeing to pay $1.25 for all the work done from 6 a. m. to 6 p. m. A short time after he also broke this agreement and proposed to pay them for their labor half in money and half in goods. He afterwards refused to carry out this arrangement, and the operatives brought suit against him, and upon this suit a compromise was made by which the superintendent agreed to pay them one-third of their wages in cash and the balance in goods. Some days later he also refused to carry out this arrangement, and then the operatives appealed to the authorities and decided to strike and suspend work until they should be paid.

It was under these circumstances that the gefe potico of the district addressed the communication in question to the authorities of Tayoltita, after being tired out with the thousand complaints made by the operatives, while at the same time the three contracts made with them having been broken, the gefe politico directed that the owners or superintendent should be notified to at least carry out the last agreement, which was to pay them one-third in money and two-thirds in goods.

In order to fully understand the interference of the political authorities in this matter, it is desirable to understand that in Mexico, even after the abolishment of slavery, a vestage of it remained in what was called "peonage," a term which expresses a certain sort of connection, against law and justice, between capital and labor. The carrying out of this system in Mexico has assumed various shapes and been done in various ways. One of these has been to refuse the operative work, in order to compel him to labor under hard conditions, among which that of making him receive goods for part of his wages is very common. By this means and charging the goods delivered at high prices, the proprietors of certain enterprises succeeded in depriving the laborer of a portion of his wages. The abuse became so great that the law interfered to prevent it, and the political authorities exercise a guardianship and vigilance to prevent the development and continuance of this corruption.

By virtue of the order addressed to the local authority at Tayoltita, this authority addressed a communication

of July 4, 1867 (it ought to be June), to the superintendent of the mine. This is Exhibit V, and is as follows:

JUZGADO 2º.—CONCILIADOR DE TAYOLTITA.

Con demasiado disgusto vé este juzgado que hace veinte y cuatro horas, que le pure una comunicacion y no se ha dignado contesta mela; de lo que prevengo a Vd. que en el término de dos horas arregle V. su trabajo con los operarios, y si no convienen desocupen las minas para que estos no pierdan mas tiempo.

Libertad y Reforma.

Tayoltita, Junio 5 de 1867.

GUADALUPE SOTO CNO.,

Administrador de la Hacienda La "Abra" Presente.

The result of this was that the superintendent came to an arrangement with his operatives, and the work was continued without interruption. The stoppage produced by this strike, according to the witnesses, lasted three days.

This is what is called "interference by the local authorities with the operations of the company"; this is what is called "ordering the company to work its mines in a manner directed by the said authorities." How would it have been if, in order to compel the superintendent to fulfill his contracts with the operatives and save the company from the agitations and disorders which strikes produce, the means had been appealed to which are now being employed in the enlightened State of Pennsylvania, where thousands of dollars are daily being spent solely for the payment of the troops sent to maintain order in the coal-mining districts, which are in the same condition as the Abra mines were? There may be some traces of rudeness incidental to a country magistrate in the foregoing document, but they disclose no spirit except a desire to preserve the relations subsisting between the mining company and its operatives on a footing of justice and equity, and prevent the recurrence of disturbances which would prejudice the interests of a whole town.

Exhibit X, the fourth, refers to a somewhat different subject. After the arrangement of the strike, and the

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superintendent had promised to fulfill his engagements with his workmen, all of which was in consequence of the correspondence of the 3d, 4th, and 5th of June, 1867, above copied, it happened that the company, a month later, stopped work. This resulted in a panic at the locality, which is easily understood. In consequence of this the gefe politico addressed the company's representative the following communication:

> Gefatura politica del partido de San Dimas.
>
> Sabiendo esta gefatura que tienen Vd. paralizado los trabajos en ese mineral, digo á Vd. que este no ha sido el compromiso que tenieron conmigo, por lo que creo que Vds. no estiman su palabra en nada. Sin embargo, so no quieren trabajar, den Vd. licencia al pueblo para pepenar metal en las minas porque no soy responsable á las consecuencias que resultan en un pueblo sin trabajo.
>
> Independencia y Reforma.
>
> San Dimas, Julio 10 de 1867.
>
> M. Morá.

The stoppage of the work and the discharge of the people was in fact a virtual breaking of the engagement made two months before, but the gefe politico, respecting the rights of the proprietors to work their mines or not, confined himself to expressing his dissatisfaction, and advising that in the event of work not being resumed, that the people should be permitted to *pepena* ores with a view of preventing disturbances for which the authorities did not choose to be responsible.

As my colleague remarked, when exculpating the Indians for certain depredations, "as the Indian will not starve without a struggle, starve he must when the white man drives away the buffaloes or kill him." This extreme case was what the local authorities of San Dimas wished to avoid.

To *pepena* the metal is something analogous to what the gleaners do who follow the mowers in the grain field. This precept, which the Bible inculcates as one not only of charity, but also of law, with regard to the crops, the Christian customs of Mexico have made extensive to mines, and the act is so frequently practiced that it has given rise to the making of a word expressly for the oc-

casion; and precisely because *pepena* is a gratuity due to the charity of the possessor, it requires his consent, and this is what the gefe politico of San Dimas asked in behalf of the people to keep them from starvation, as they were without work.

Consequently, "to *pepena* metals in the mines" is not precisely the same as "to collect ores in the mines," as is translated on page 53, or "that they may work the mines," as is still more incorrectly said on page 154 of the other translation.

It is as unjust to bring a charge against Mexico because the gefe politico of San Dimas, under the circumstances, asked the superintendent of the mines to grant the people permission to *pepena* metals, as it would be to say that Ruth was committing an unlawful act when she was discovered by Boaz.

The result of this communication, whatever it may have been, is not shown by the papers. The truth, however, is that none of the acts contained in the four exhibits above copied constitute an interference by the authorities, nor an avowed hostility to the company, nor a wrong for which a claim can be made.

The amount of compensation demanded for this offense is not stated. The claimants throughout have endeavored to invest these things with an air of uncertainty, calculated to bewilder the imagination and give the claim gigantic proportions. But, under the unfailing hand of scrutiny, one finds that there is no substance beneath the garbs in which counsel, and even the printers, have so gaudily dressed this claim.

In the charge marked G there is presented as attributable to the already stated interference of the local government in the operation of the mines, and its hostility towards the company that was working them, the robbery of certain mules and a large quantity of ores which were stored in the yards of the San Nicolas reducing works. All this it is said was due to the rapacity and violence of the people.

It is shown by the Exhibits Nos. 1, 2, and 3 of the defensive testimony that the company never had any mule trains; that when they had any extraordinary work to do they were compelled to hire mules; that they only owned eleven, of which three were lost and paid for;

that of the remainder four were sold to Pioguinto Nuñez, one to Calixto Sarreta, and three were carried away by Superintendent Exall when he left the company.

The robbery of the mules, stated in this charge and of which none of the witnesses presented in support of the claim speak in precise terms or give the particulars, could not thus have occurred.

With regard to the valuable ores at the reducing works, it is shown by the depositions of twenty-three witnesses, and among them that of Superintendent Granger (Exhibits 1, 2, and 3 of defensive testimony), that neither the authorities nor the people ever took a single stone belonging to the company without the express permission of the superintendent, and that he gave permission to some of the operatives to *pepena* ores for the purpose of protecting the mines (according to the mining ordinances) which were not being worked, and thus prevent them from being denounced as abandoned.

The robberies in question, due to the cupidity and lawless violence of the people, can in no wise be made a matter of responsibility for the Mexican Government, unless it could be satisfactorily proved that the authorities intervened in it and co-operated in its execution.

Charge H refers to the alleged confinement of Charles Exall, the superintendent, and represents this as a proof of hostility and the cause of the great damage to the company. It is proved by the statements of four unimpeachable witne-ses that the imprisonment in question, which only lasted four days, was imposed by Judge Nicanor Perez for an offense committed by the said Exall against his authority. The works at the mines were not interrupted by this act, of which there is proof, nor has the company any right to claim for an injury which, if true, only affects Exall. He never made any complaint, as he might legally have done if the penalty in question had been unjust.

The last charges, H, I, J, K, L, refer to different acts of violence, and the parties committing them are all designated by the pronoun *they*. Does this *they* refer to the Mexican authorities, to the operatives at the mines, or to the people of San Dimas? There is no way of finding out by the brief, but some of the witnesses presented by the claimant solve the enigma.

All of these acts, if they really occurred, are to be attributed to the exasperation of the operatives on account of the repeated violation of their contracts and the arbitrary manner in which they were constantly being treated by the Abra Company. Charge H, for example, says:

> They made armed attacks on the company's hacienda of San Nicolas, breaking its doors and endangering the lives of its superintendent and other American employees.

Witnesses produced in support of this charge state that it was committed by an armed mob of forty or fifty men.

Charge L consists in that the company was surrounded by an ignorant people, whose animosity was excited and directed by the authorities themselves.

It will be seen that in all these charges the parties committing the wrong were not the local authorities nor yet the central Government of Mexico, and that in order to involve the responsibility of the Government a studied endeavor is made to impute to it an indirect participation, by asserting that the local authorities favored and excited this mutinous spirit. The evidence shows precisely the contrary; the only acts of the authorities which appear proven show the reverse, that they endeavored to avoid the evil, and for this purpose tried to prevail upon the company to fulfill its duty and not exasperate the operators.

These vague and noisy imputations of exciting the people to mutiny and robbery are unaccompanied by any specific proof, and should be classed among the devices already so well known and which form part of the tactics of the claimant.

After having so fully examined this voluminous case, nothing now remains but to make some important reflections on the character of the evidence.

The most of that submitted by the Abra Company was obtained by fraud. Thirty witnesses, and among them many who had previously declared in support of the claim, explain in the defensive testimony how their evidence was obtained. In certain cases money was used; in others the affidavits were made up by the lawyer who was charged with obtaining them, and then the

witnesses were carried before the United States consul, without their reading them and without their knowing what they contained, to swear to them.

In addition to this, the greater part of the deponents, when they do not contradict themselves, solely state what they know by hearsay, on suppositions or rumors, and never what they know personally.

James Granger (page 147) and Marcus Mora (page 143) are highly unfavorable to the party by whom they were presented.

The final result of this gigantic claim is, after all, nothing; it verges almost in the absurd. After burrowing among this mountain of papers, we find at last, as in the mountain of the fable, *ridiculus mus.*

The claimants expect to see something else come out of it, in the shape of a greater or less pecuniary award. The undersigned can not vote for it, because he thinks that it will be the triumph of a system of which this claim is a sample, and which consists in demanding enormous sums, however unjust, believing that when *much* is demanded, *something* will always be obtained.

In the opinion of the undersigned Commissioner, these claimants are entitled to nothing.

IN THE COURT OF CLAIMS.

THE UNITED STATES *against* LA ABRA SILVER MINING COMPANY and Others.	In Equity. No. 17,917.

It is hereby stipulated and agreed by and between the undersigned that the argument of the Mexican agent, Don E. Avila, before the United States and Mexican Claims Commission, as translated from the Spanish of the original on file in the Department of State, by Henry L. Thomas, the official translator of the said Department, and filed in court with this stipulation, shall be regarded and taken as included in Complainant's Exhibit "A," which is made part of the bill of complaint in this cause, the same as if the said argument had been set out at large therein.

ROBERT B. LINES,
Special Asst. to the Atty.-Gen.
SHELLABARGER & WILSON and
CRAMMOND KENNEDY,
Solrs. for La Abra Co. and Other Dfdts.

WASHINGTON, D. C., *Dec. 29, 1893.*

Filed Jan'y 11, 1894.

U. S. AND MEXICAN CLAIMS COMMISSION.

THE ABRA MINING CO. *vs.* MEXICO.	No. 489.

This company claims three million and thirty dollars from the Mexican Government for outlays which it asserts that it has made for the working of various mines

situated in the States of Durango and Sinaloa, the said mines being known by the general name of Abra Mines (Minas de la Abra), and also for the losses and damages which it claims to have suffered in consequence of the forced abandonment of said mines.

The company bases its demands on the following points:

1. That the authorities and people of Mexico manifested a marked prejudice against the employees of the mines, and openly declared their purpose of expelling all the American companies from the country, with a view to getting possession of their property.

2. That acts of violence were committed against the property of the company, and that the lives of the employees were constantly threatened.

3. That the authorities frequently seized the trains of mules laden with provisions that belonged to the company, and appropriated them to their use.

4. That, with the knowledge and consent of the authorities, large quantities of ore which had been taken from the mines were stolen, and that the employees who offered resistance to the theft were threatened with death.

5. That one of the employees of the company was murdered by the forces of the Liberal Government and that the train of mules which he was driving was seized.

6. That Charles Exall, the superintendent of the company was arrested, fined and imprisoned without cause, without form of trial, and without being informed of his offense; and that, although he complained to the authorities of Durango and Sinaloa, they refused to afford him redress.

7. That the company was compelled to pay various loans, among others one of one thousand two hundred dollars to Commandant Jesus Valdespino.

8. Finally, that owing to these persecutions, outrages, and threats, and to this lack of security, it became impossible for the company to work the mines, and it was obliged to abandon them, which abandonment was the cause of its ruin.

It also bases its complaint upon the following grounds:

1. That the company expended more than three hundred thousand dollars in working the mines.

2. That the mines were unusually rich in ore.

3. That the company was getting a large quantity of ore from them, and that, if it had been able to go on working them, it would have realized a profit of a million of dollars per annum.

4. That the heavy expense incurred by the company made the buildings and other permanent constructions worth a million of dollars.

5. That, owing to the forced abandonment of the mines, the company lost its improvements, machinery, and a thousand tons of silver ore already mined, the value of which might be estimated at five hundred thousand dollars.

6. Finally, that, in addition to the losses and damages referred to, the company spent thirty thousand dollars in carrying on its (not mining) business.

Objections.

The American citizenship of the persons who form the Abra Mining Company is not proved, and the Republic can not be responsible for the losses which it claims to have sustained, but it is, moreover, the duty of the Commission to reject all the claims of the company for the following reasons:

The first is that the claimants adduce no evidence other than their own assertion, with regard to the amount of their expenditures and losses.

The second is that the statements made by the claimants in their memorial are false.

The third is that the mining companies organized to work the mines of the Republic can claim no rights as foreigners, as regards the use, preservation and removal of their mining property. All questions that may arise will be examined by the courts of the Republic, and in conformity with its laws, to the exclusion of all foreign intervention of any kind whatever. Such is the spirit

and the letter of Articles 5 and 6 of the law of February 1st, 1856.

The fourth reason is that, even supposing this claim to be just, no recourse could be had to diplomacy until all the means had been resorted to that are established in the country, before its courts and in conformity with its laws.

The fifth is that even if the statements on which the company bases its complaints were true, even if the Republic were responsible, and recourse had been legally had to diplomacy, the pretensions of the company are so exaggerated that all that is claimed by it should never be paid by the Government of Mexico.

In order to render the truth of the five foregoing propositions perfectly evident, it is necessary succinctly to relate the history of this affair as it is to be seen in the documents, a copy of which is subjoined.

Some of the mines which are known by the general name of "Abra Mines," were, many years ago, wholly abandoned and neglected, and, owing to a claim to them, which was filed by certain American citizens, they were awarded to them in pursuance of our laws in the year 1863.

These Americans, who have now become the owners of the aforesaid mines, offered fifty thousand dollars to Don Juan Castillo del Valle for the mines known as the "Luz" and "Ro-ario" mines, the only ones that were worked at that time. This offer was made on condition that a company should be organized in the United States to purchase and work the aforesaid mines.

After some time had elapsed the Americans returned and paid the price agreed upon to Don Juan Castillo del Valle, they thus becoming the owners of the mines, to which they gave the general name of "Abra Mines."

The good price obtained by Mr. Castillo for the mines surprized everybody, for both in the district of San Dimas and in the capital of the State it was public and notorious that Mr. Castillo had been working these mines for ten years without realizing large profits, because they only yielded from eighty to a hundred loads (mule loads) of ore per month, the reduction of which was very costly.

It was, of course, supposed that the Americans were

very ignorant of mining, or that they were, perhaps, endeavoring to deceive certain capitalists in the United States. The latter supposition appears to be the one that is most justified by the events.

The company devoted its principal attention to the Rosario mine, and, in order to begin operations, it built a number of dwelling-houses for the employees, and entirely destroyed the mining plant which had been established by Mr. Castillo, substituting therefor machinery which it brought from the port of Mazatlan. The results of this substitution did not meet the expectations of the company, and led to the ruin of the Tayoltita mine, because, since that time, it has been impossible for the miners to smelt their ore without taking it to a great distance, which is very costly.

The company employed American workmen to work the mines. These men had little or no knowledge of mining. In fact, they undertook to work the mines in a manner which showed that they had not the most elementary knowledge of the business. Their whole endeavor was to get the greatest possible quantity of ore-bearing fossils (quijos) without caring to seek for the richest veins. They made a large pile—about fourteen thousand loads—of these fossils (quijos or tepetates) which they called silver. They formed a large pile on the Guadalupe estate, which they covered with a coating of real metal, consisting of from three to four hundred loads.

This stock, which they called metal or ore, was thus prepared for the purpose of having it examined by a commissioner who came from the United States for the company, to inform himself of the progress and results of the business. (See the evidence contained in Appendix No. 4.)

This purpose having been accomplished, Charles Exall, the superintendent of the company, being convinced that no profit whatever was to be derived from the mines, because they contained very little ore, removed all the real ore that was contained in the pile on the Guadalupe estate, smelted it, and afterwards took it to Durango to have it coined. He then paid a gambling debt which he had contracted, returned to Tayoltita, and selling some other things, he removed permanently to Mazat-

lan, leaving James Granger in charge of the business as superintendent.

Granger, in his turn, sold the salt, the quicksilver, and whatever provisions belonging to the company still remained. He took away many of the iron parts of the machinery, the balconies and doors of the dwelling-houses, the frame and the counter of the store, and appropriated all these articles to his own private use.

The mines of the company were thenceforth abandoned, as were the dwelling-houses of the employees, the machinery and the large pile of fossils (tepetates or quijos) taken from the mines. Everything remains in the same state in which Superintendent Exall left it, with the exception of the damage done by Granger and that which the machinery and other fixtures have sustained owing to their having been abandoned.

The causes which led to the abandonment of the mines and the losses sustained by the company could not be more evident than they are.

At the mines of San Dimas and Tayoltita everybody knows that the ore of the Abra Mines, although it contains a fair amount of silver, is very scarce, and it does not pay to mine it unless this is very economically done.

Everybody also knows that the company spent large sums in setting up machinery that was almost useless, when it might have realized the same or even greater profits than did Don Juan Castillo del Valle, if it had left undisturbed the mining plant which he had established.

Finally, everybody knows that the American employees of the company were very ignorant of mining, and that large sums were absorbed by the payment of their enormous unearned salaries.

Now the company is well aware of the truth of these statements, but not being willing to bear the losses consequent upon a bad business operation, it has proposed to make them good, with enormous usury, by means of a claim.

It is only necessary to see how it has endeavored to distort some facts and to manufacture others which were wholly without foundation, in order to become perfectly well aware of this truth.

The company needed some evidence on which to base

its claim, and in order to obtain it it appointed as its agent an American who was styled General, and whose name was Alonzo V. Redams.* This gentleman, accompanied by Mr. Dena,† went to Tayoltita, and, with the assistance of Superintendent James Granger, collected some Mexican miners, and offered them money to declare that the statements regarding the losses, persecutions and outrages complained of by the company were true. Among the miners collected by Granger were Bartolo Rodrigues, Guadalupe Soto, Aquilino Calderon, José Maria Loaeza, Juan Francisco Gamboa, and Matias Avalos. The first three were taken by Redams before Anastasio Milan, the judge of San Dimas. This judge took their depositions, but as these turned out to be just the opposite of what was required by the interest of the company, Redams was unwilling to have the examination continued at San Dimas, and took the witnesses Loeiza, Gamboa and Avalos with him to Mazatlan, offering to give them a reward. When they arrived at Mazatlan, he introduced them, at the National Hotel, to two Americans who were there, one of them, a resident of Camacho, was named William N. These Americans took the depositions of the witnesses extra-judicially; they wrote these instruments themselves, and fixed them up in their own fashion. Afterwards the same Americans, accompanied by Redams, took the witnesses before the consul at Mazatlan, who, without reading to them the depositions which had been taken at the hotel, merely asked them whether they ratified them, and, being answered in the affirmative, the consul issued the three documents which form a part of the evidence in support of this claim..

All and each of the facts that have been stated are fully proved by the depositions of thirty witnesses, in the four appendices which I present. Among these witnesses there are some whose testimony is irrecusable. Such is, for instance, that of Matias Avalos, Aquilino Calderon, Guadalupe Soto and Bartolo Rodriguez, witnesses whose testimony was sought by the company itself in support of its claim; that of Refugio Fonseca, Vic-

* The context shows that this should be *Alonzo W Adams.*

† Dana.

toriano Sandobal and the American N. A. Sloan, a clerk of the company, and finally the testimony of Superintendent James Granger, who, with so much zeal and by the aid of reprehensible means, has endeavored to uphold and justify the company's claim.

From a simple perusal of the accompanying document, from which the history of the business has been taken, the truth is deduced, without distortion, of the propositions laid down at the beginning as the basis of the Mexican Republic's defence against the pretensions of the Abra Mining Company.

The first, that is, that the claimants have not proved the amount of their outlays and losses, is true, because none of the witnesses presented by the company has any exact knowledge on these two points, and their testimony, which does not agree, is based merely on more or less probable estimates.

The truth is also deduced of the second proposition, that is to say, that the statements contained in the memorial are not true. Nevertheless, with a view to making the demonstration plainer, I will give a resumé of these statements.

It is said that the company was hampered in its work by the illegal acts of the authorities, and by the depredations of the people.

Now the only positive acts of hostility which are mentioned in the memorial are the imprisonment of Superintendent Charles Exall and the alleged murders of Grove and Scottie. All the rest are but alleged conversations relating to the intention of expelling the employees of the company from the country.

As to the imprisonment of Charles Exall, it is shown by the testimony of four unexceptionable witnesses that it was due to the offenses which he had committed against the authority of Judge Nicanor Perez, who punished him by placing him under arrest for three days. It is thus seen that there was no rigorous confinement in prison, and no fine, and Mr. Exall cannot be ignorant, as he claims to be, of the cause of his arrest. If the judge had acted illegally, the superintendent should have complained to the superior authorities. He says that he did so, but he has not proved this assertion. This occurrence, moreover, did not, in any wise, affect the working

of the mines, for, long after it had taken place, they continued in the same state in which they had been before. Consequently, it cannot be said that it affected the interests of the company, nor can the abandonment of the mines be attributed to this occurrence.

With regard to the murder of Groves and Scottie, no evidence whatever has been presented by the company. All the witnesses base their statements on reports, rumors and suppositions, but not a single one dares to assert that he has any positive knowledge of these outrages. On the contrary, what is proved is that an American named Petillon murdered a Mexican named Teodoro Soto in an outrageous manner. It is thus seen that the complaint of the company on this point has no foundation whatever.

In the matter of depredations, the memorial says that the authorities frequently seized the mule trains carrying provisions which belonged to the company.

It is shown by appendices 1, 2 and 3 that the company never had any mule trains; that it was obliged to hire them when any extra service had to be performed; that it owned but eleven mules, three of which it lost and for which it was paid, and, of the remainder, four were sold to Pioquinto Nunez, one to Calisto Sarreta, and three which had been trained to the saddle, were taken by Superintendent Exall when he left the company's service.

The memorial further states that, with the knowledge and consent of the authorities, large quantities of ore were stolen, and that the employees who offered resistance to the theft were threatened with death.

By the statements of twenty-nine witnesses, Superintendent Granger himself among the number, it is proved in appendices 1, 2 and 3 that neither the authorities nor the people ever took a single stone belonging to the company without the express consent of the superintendent; that the latter gave a permit to several miners to remove the ore so that the mines that could not be worked by the company should not appear to have been abandoned, this being required by law.

It is also proved by the document subjoined to Appendix No. 1, that Guadalupe Soto, in virtue of a contract made with Superintendent Exall, built two tahonas on the Guadalupe estate, and that he there smelted the

ore mined by the workmen with the superintendent's permission. It is likewise proved that the dispute between the company and Guadalupe Soto was not on account of any of the Abra mines, but on account of the ownership of the Guadalupe estate, which was awarded to the company by a decision of the magistrate at Durango.

It here seems proper to make two remarks. Many of the witnesses who have testified in favor of the company have sought to make it appear that Judge Guadalupe Soto is one of the company's bitterest enemies, and that he was most firmly purposed to expel it from the country—one of the witnesses having gone so far as to state that all the mines and belongings of the company are now in Soto's possession. The fact that Superintendent Exall made a contract with Soto for the construction of two tahonas (smelting houses) clearly shows that Soto was on good terms with the company, and that he did not even believe that the mines were abandoned. The fact that Soto was solicited for the purpose of giving his testimony before Judge Milan in behalf of the company, still further corroborates the belief that he was not considered hostile to it.

Finally, the circumstance that the case was decided in favor of the company is the most convincing proof that the authorities of the country, so far from being hostile to it, protected its interests even against the Mexicans themselves.

But let us continue our resumé.

The memorial says that, owing to the persecutions and outrages committed by the authorities, it became impossible for the company to work the mines.

It is proved by the statements of Superintendent Granger and those of eighteen other witnesses, that the company did not abandon the mines on account of the persecutions and outrages of the authorities, but because the ore of the mines, although containing a considerable amount of silver, is very scarce, and it does not pay to smelt it; because the machinery that was set up to work the mines was very costly, and did not turn out well, and finally, because the Americans employed by the company received enormous salaries, and were not practical miners.

It is said that the mines were unusually rich in ore, and that ore to the value of five hundred thousand dollars had been taken from them.

It has been proved that the mines contained very little ore, that they were abandoned many years ago, and that the only one that was worked by Mr. Castillo del Valle never gave more than a small yield. It has likewise been proved that the ore-bearing fossils (tepetates or quijos) that were taken out by the company are of no use at all, because, although they contain some silver, the amount is so small that it does not pay to smelt it, and it can therefore scarcely be worth five hundred thousand dollars.

It is stated in the memorial that if the company had been able to continue its work, it would have realized a profit of a million dollars per annum.

It has been shown that if the company had continued to work the mines according to the system which it established it would have sustained considerable losses instead of realizing a profit of a million dollars per annum.

Finally, it is said in the memorial that the company lost the mines, fixtures, machinery and a thousand tons of ore which it had taken out.

Superintendent Granger and twenty other witnesses have testified that the mines are now in the same condition in which they were left by the company. This, besides proving that the company did not lose the mines, also proves that they are not as rich as it is claimed that they are, for if they were so, almost anybody would have filed a claim to them, as provided by law, owing to their being abandoned.

It is further proved that the machinery and the dwelling-houses built by the company are still there; that the whole property is abandoned, and that Superintendent Granger disposed of the provisions and of all the other things that he could sell or appropriate to his own use. It is likewise proved that Superintendent Exall took to Durango, for the purpose of having it coined, that portion of the silver that was worth smelting, and that the remainder of what had been taken from the mines is still on the Guadalupe estate, in the same condition in which it was left by the company.

If it were true, therefore, that the authorities of San

Dimas and Tayoltita had determined to expel the company from the country in order to get possession of its property, as is stated in the memorial, it is evident that that property would not now be abandoned.

Let us proceed to examine the evidence adduced by the claimants.

None of the witnesses who have testified in its favor has any positive knowledge of the main facts on which the claim is based. Almost all the witnesses base their statements upon rumors, reports and conversations, and upon *the purport of certain words uttered by Prefect Macario Olvera, who has since died.*

The most positive statements are those of Superintendent Charles Exall, James Granger, and the witnesses Alfred Green, Jose Maria Loaiza, Francisco Gamboa and Matias Avalos.

Superintendent Charles Exall can not be an impartial witness, for the reason that he has an interest in the claim.

The witness James Granger has not told the truth. In order to become convinced of this, it will be sufficient to compare the statements made by him before the Consul at Mazatlan, in the company's favor, with those which he made at San Dimas and Tayoltita in favor of the Republic.

It also appears that the witness Alfred Green has not told the truth. His testimony is very suspicious on account of his having presented a similar claim against Mexico, so that it is quite natural that he should do all in his power to establish facts that may be of benefit to him.

This witness confesses that he has been banished from this Republic, and yet he soon after states that he was obliged to leave the country because his life was threatened. He says that he was arrested without knowing the reason why, and that, when he was released, he found that the mine known as the San Luiz mine, which belonged to him, had been taken from him; that he complained to the authorities and had the parties who had taken possession of the mines summoned to appear before them, but that the said parties uttered such threats that the magistrate, being intimidated, did not afford him redress, but on the other hand, advised him to leave the

country because his life was in danger. A more untruthful statement could not possibly be made.

It is shown by the statements contained in Appendix No. 1, that Alfred Green was subjected to a brief arrest for offenses committed against the authorities in connection with the payment of a certain sum which was claimed from him. That a claim was filed to the San Luis mine on account of its having been abandoned and neglected for a long time, and that, after many and lengthy proceedings before the competent authorities, who listened to Alfred Green's defence, the mine was awarded to the parties who had filed the claim in a manner wholly in accordance with law. Can he be ignorant, as he says he is, of the cause of his arrest? Or can he complain of having been illegally deprived of his property?

This witness likewise states that the people and the authorities of the country bitterly hate all foreign owners of mines, and that this hate culminated in open violence and in the robbery, by force, of the Abra Mining Co ; that he frequently heard the Mexicans express their intention of killing all the employees of the company. That Superintendent Exall and his employees were expelled from the country. Finally, that the working of the mines yielded a profit of one million five hundred thousand dollars per annum to the company.

In the first place, it is proved in Appendix No. 2 that the American Company that works the Candelaria and the Bolanos mines in Durango, and derives large profits therefrom, has, for many years, worked, and is still working its mines without being disturbed, threatened or persecuted by the authorities. It is consequently untrue that any hatred has been declared against all foreign owners of mines.

In the second place, the company which brings this claim has not dared to assert that the authorities or the people intended to kill the employees of the Abra Company. Neither has it said that Superintendent Exall and the employees were expelled, or that it was deprived of the mines by force, nor has it asserted that the annual yield of the mines was one million five hundred thousand dollars per annum. Does not all this show that Alfred Green's statement was made from interested mo-

tives, or that it was prompted by hatred of the Republic? Is not his statement, in itself, sufficient to convict him of falsehood?

The testimony of Avalos, Gamboa, and Loaeza should be thrown out: *First*, Because it has been shown that it was given extra judicially; *second*, because it appears that their statements have been maliciously garbled; and *third*, because there is reason to believe that these witnesses were paid for the express purpose of testifying in the company's behalf.

In order to justify the illegality of the extra-judicial statements made by these witnesses, it has been claimed Judge Anastasio Milan refused to take their depositions when they were brought before him for this purpose by General Redams. This, however, is absolutely false. Judge Milan took their depositions, but as they turned out to be not such as were wanted by the company, General Redams made no mention of them, and hunted up other witnesses in order to have them examined at Mazatlan. (See the statements of eight witnesses in Appendices Nos. 1 and 2.) (On this point two statements were made by James Granger, in which he contradicts himself in a remarkable manner.)

In proof of the manner in which the authorities persecuted the company, two communications signed by Political Chief Marcos Mora have been presented.

The contents of these communications furnish additional evidence that the authorities did not seek to hamper the work of the company, much less to despoil it of its property. On the contrary, the political chief complains in these communications, that the people are without employment through the fault of the company, and admonishes it to fulfill the engagement contracted by it with the miners.

It is here necessary to state the causes which led to these orders of the political chief. According to the testimony of several witnesses, among them that of Victoriano Sandoval, an employee of the company, the superintendent sought to employ Mexicans to work in the mines, offering to pay them in money for all the labor that they should perform, either by day or night. Having thus secured the services of the men, the superintendent refused to carry out his agreement, and made a

new contract with them for ten reals in money, for such work as they should do between the hours of six o'clock in the morning and six in the evening. He soon failed to fulfill this agreement, and offered to pay one-half of their wages in money and the rest in goods. He finally refused even to do this, and the men complained to the magistrate, whereupon the Superintendent agreed to pay the men one-third of their wages in money and the rest in goods. After some days the superintendent failed to carry out even this last arrangement, and then the men again complained to the magistrate, and resolved by common consent to stop work until the superintendent should pay them, and they then compelled Aquilino Calderon to leave the mines, he being the only one who had not entered into the arrangement. In view of this, the magistrate addresssd the communication mentioned in the claim to the superintendent, requiring him to fulfill the engagement which he had made, and telling him that if it did not suit his interest to continue to work the mines, he must at least allow the men to earn their livelihood by mining ore. The result of these communications was that the superintendent made a new arrangement with the men, and that the latter resumed work in the mines after they had been abandoned for three days.

It is seen from all the foregoing that this conflict, which is the only one that arose between the company and the authorities, was not provoked by the latter, and in no wise occasioned the abandonment of the mines, since the work of the company was continued as before, for a long time after it had arisen. It is likewise seen that the company did not derive, as he says it did, large profits from the working of the mines, for had this been the case, it would have had no difficulty in raising the money to pay the wages of the men whom it employed.

An official communication from Commandant Jesus Valdespino has also been presented as evidence of the forced loans that were required from the company, and, to make to make the case still stronger, the testimony of William G. S. Clarke, who states that innumerable loans were extorted from the company.

In the first place, Mr. Valdespino's communication shows nothing more than that a loan was asked for; but

the company has not produced any receipt or any other proof that it was really compelled to furnish any money at all; on the contrary, it is shown by Appendices Nos. 1 and 2 that the loan of one thousand two hundred dollars, which was asked for by Valdespino, was reduced to two hundred dollars, which amount was collected from the residents of Tayoltita, who furnished the money as a voluntary gift. It is likewise proved that Superintendent Exall made a voluntary contribution of sixteen dollars, and that another American clerk of the company contributed a piece of blanketing.

In the second place, the loans mentioned by the witness William G. S. Clark are not shown to have been made by any evidence other than his testimony, nor does the memorial presented by the company make any mention of them.

It is therefore shown that the statements made in the memorial are false.

This correctness of the third proposition requires no demonstration, it being based upon both the spirit and the letter of Articles 5 and 6 of the law of February 1st, 1856.

The fourth proposition is fully proved by the confession of the claimants. They did not have recourse, before applying to the Mixed Commission, to any of the courts of the Republic for the redress of their grievances, nor did they lay their claims before the Department of State. Consequently, they can not complain of any denial of justice.

It is not to be doubted that the Government of Mexico is under no obligation whatever to pay all that is claimed by the company, as stated in the fifth proposition, because when the expense incurred for the working of the mines, the losses which it is claimed were sustained, and the profits which it was hoped to realize, are compared with the enormous amount claimed, the exaggeration of the company's pretensions become perfectly evident.

In view of the foregoing, I ask that this claim be rejected by the Commission.

E. Avila.
(Flourish.)

IN THE COURT OF CLAIMS.

THE UNITED STATES, PLAINTIFF, *vs.* LA ABRA SILVER MINING COMPANY *et al.*, DEFENDANTS.	In Equity. No. 17,917.

It is hereby stipulated and agreed, this 9th day of May, 1894, by and between the parties to this suit, that the defendant, La Abra Silver Mining Company, shall plead, or answer on or before the first day of June, next ensuing; that the plea or answer of the said company shall be taken as and for the plea or answer of such of the other defendants as shall not plead or answer on his, her or their own behalf; and that the United States shall not enter judgment by default for want of a plea or answer against any of the defendants who shall not so plead or answer unless and until judgment shall be entered in favor of the United States in this suit by this court, or, in case of appeal, by the Supreme Court of the United States; provided that if no such appeal shall be taken, judgment shall be entered by default, on the expiration of the time limited for taking such appeal, against such defendants as shall not have so pleaded or answered after judgment shall have been entered in this court against the said company.

ROBERT B. LINES,
Specl. Asst. to the Atty. Gen.
SHELLABARGER & WILSON &
CRAMMOND KENNEDY,
Of Counsel for La Abra Co. and Other Defendants.

Filed May 10, 1894.

IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.* } In Equity. No. 17,917.

Order of Court modifying former order.

The order of the Court fixing the time for the defendants to answer was modified so that the defendant, the La Abra Silver Mining Company, shall plead or answer on or before the first day of June next; that the plea or answer of the said Company shall be taken as and for the plea or answer of such of the other defendants as shall not plead or answer on his, her, or their own behalf; and that the United States shall not enter judgment by default for want of a plea or answer against any of the defendants who shall not so plead or answer, unless and until judgment shall be entered in favor of the United States in this suit by this Court, or in case of appeal, by the Supreme Court of the United States; provided that if no such appeal be taken judgment shall be entered by default on the expiration of the time limited for taking such appeal against such defendants as shall not have so pleaded or answered after judgment shall have been entered in this Court against the said Company.

BY THE COURT.

Filed May 14, 1894.

In the Court of Claims.

THE UNITED STATES

vs.

LA ABRA SILVER MINING COMPANY, George Ticknor Curtis, John H. Rice, Eugene Jones, Sumner Stow Ely, Cyrus C. Camp, executor of the last will and testament of Herman Camp, deceased; Ellen V. Camp, The American Security and Trust Company, administrator with the will annexed of the estate which was of Samuel C. Pomeroy, deceased; Edward S. Hamlin, administrator with the will annexed of the estate which was of Thomas W. Bartley, deceased; Samuel Shellabarger, Jeremiah M. Wilson, Katie L. Hatch, Charles T. Parry, Joseph Hopkinson, Sterling B. Toney, Henry S. Foote, executor of the last will and testament of Henry S. Foote, deceased; Frederick P. Stanton, Daniel M. Adams, executor of the last will and Testament of Alonzo W. Adams, deceased; John W. Burke, executor of the last will and testament of William W. Boyce, deceased; George H. Williams, Crammond Kennedy, and Edward M. Harrington.

In Equity.

No. 17,917.

The Answer of La Abra Silver Mining Company, one of the Defendants, by its Attorneys. Shellabarger and Wilson and Crammond Kennedy, to the Bill of Complaint of the United States, Plaintiff.

This defendant, in explanation and defense of the fact that much will appear in this answer in the nature of historical statement, evidence, and argument, respectfully submits that the introduction into the answer of such matter is deemed by this defendant to have been rendered indispensable and a matter of right, and to have been forced upon this defendant by the fact that the plaintiff's bill of complaint is largely made up of evidence and abounds throughout with historical statement and argument not in the nature of proper pleading, and often inaccurate and misleading, and requiring to be met with counter statements. This defendant, fearing that a failure to meet such inaccurate and misleading matter would be deemed an admission of its accuracy and truthfulness, is driven to meet it by appropriate averments in this answer likewise in the nature of historical statement, evidence, and argument.

This defendant now, and at all times hereafter, saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says :

I.

This defendant admits the allegations in the first paragraph of the said bill of complaint contained.

II.

This defendant admits the allegations in the second paragraph of the said bill of complaint contained.

III.

This defendant admits the allegations in the third paragraph of the said bill of complaint contained.

IV.

This defendant admits the allegations in the fourth paragraph of the said bill of complaint contained.

V.

This defendant admits the allegations in the fifth paragraph of the said bill of complaint contained.

VI.

This defendant admits the allegation in the sixth paragraph of the said bill of complaint contained, to wit, that this defendant, through the Department of State and the agent of the United States, caused to be exhibited to, and filed with, the United States and Mexican Claims Commission, organized under the treaty of July 4, 1868, between the United States and Mexico, certain *ex parte* affidavits or depositions and certificates in support of its claim against the Mexican Government, and this defendant alleges that the evidence submitted to the said Commission by the Mexican Government was of the same *ex parte* character.

This defendant further alleges that when it began to take testimony in support of its said claim it gave notice in writing to Caleb Cushing, who at that time represented the Mexican Government as its agent before the said Commission, setting forth the time and place for taking such testimony, so that he might be present or proceed as might seem proper to him in his said official capacity, and the said Mexican agent replied, in substance, to the said notice that he was not entitled to the same and would not appear.

This defendant, further answering the said sixth paragraph of the said bill, denies the allegation therein contained, that the Mexican Government filed all the evidence which, by the use of the utmost diligence, it could obtain within the time allowed by the rules adopted

by the said Commissioners for obtaining proof in defense against the said claim; and this defendant alleges that the witnesses on whose *ex parte* affidavits and exhibits the Mexican Government, since the adjournment of the said Commission, has sought to impeach the said award which was rendered by Sir Edward Thornton, as umpire of the said Commission, in favor of this defendant, could have been examined by the Mexican Government and their testimony rebutted by this defendant while the said claim was pending before the said Commission and before it was decided by the umpire, as this defendant will more particularly hereinafter aver in answer to the eleventh paragraph of the complainant's said bill.

This defendant, further answering the said sixth paragraph of the said bill, admits the allegation therein contained, that this defendant caused to be printed for the use of the said Commission the proofs in support of, and in defense against, the said claim, having previously caused such portions of the said proofs as were in Spanish to be translated into English; but in answer and objection to the prayer of the complainant that the alleged copy of the said proofs, which is appended to the bill and marked Exhibit A, may be taken and considered as a part of the bill, this defendant avers that the act of Congress which the complainant cites in the fourteenth paragraph of the said bill of complaint as conferring full jurisdiction on this honorable court to hear and determine this suit, requires that the said proofs or evidence submitted for and against the said claim to the said Commission shall be certified to this honorable court by the Secretary of State, in whose custody are the records of the said Commission appertaining to the United States.

VII.

This defendant admits the allegations contained in the seventh paragraph of the bill of complaint, to wit,

that the said claim was heard by the said Commissioners on this defendant's said memorial and on the evidence for and against the said claim, on or about the 19th of May, 1875, and that the United States Commissioner, Wadsworth, was of opinion, upon such consideration, that certain allowances should be made upon the said claim, and that the Mexican Commissioner, Zamacona, was of opinion that the said claim should be rejected altogether on the ground that the evidence in support thereof was insufficient, false, and in part procured by fraud, and that it was outweighed by the defensive evidence; but this defendant denies the allegation in the said seventh paragraph contained, to wit, that thereupon the said claim was referred to the said Sir Edward Thornton as umpire for his decision upon the points of disagreement between said Commissioners; and this defendant alleges that, as stated in the opinion of the said United States Commissioner Wadsworth, quoted at length in the said seventh paragraph of the said bill, the case as an entirety was referred to the said umpire, "to be disposed of by him according to his views alone."

VIII.

This defendant admits the allegations in the eighth paragraph of the said bill of complaint contained, to wit, that the said umpire, Sir Edward Thornton, made an award, on the 27th day of December, 1875, in favor of this defendant for the amount and in the terms stated in the said eighth paragraph, and this defendant alleges that the said award was rendered on the 27th day of December, 1875, by the said umpire, upon full consideration of the opinions of the said Commissioners and of all the evidence which had been filed with the said Commission for and against the said claim, by this defendant and the Mexican Government, since the 14th day of June,

1870, when this defendant's memorial was presented, as aforesaid, to the said Commission.

IX.

This defendant admits the allegation in the ninth paragraph of the said bill of complaint contained, to wit, that the Mexican agent, Avila, on the 19th of September, 1876, moved the umpire for a rehearing of this defendant's claim, and that the umpire denied the motion on or about the 20th day of the following October, but for a full and more accurate statement of the grounds on which the said motion was made than is in the said ninth paragraph contained, this defendant craves leave to refer to the text of the said motion as it is to be found in the records of the said Commission in the Department of State.

X.

This defendant admits the allegations in the tenth paragraph of the said bill of complaint contained in regard to the gist and gravamen of its said claim, as stated in its said memorial to the said Commission; but this defendant denies the allegation in the said tenth paragraph contained, that, intending to deceive the United States and the said Commissioners and umpire, and to prevent the said Republic of Mexico from showing the falsity of this defendant's claim, this defendant purposely or otherwise suppressed and abstained from presenting in its proofs any books or reports relating to the alleged threats or illegal and unfriendly acts of the Mexican authorities and people, or to its expenditures on its mines, or to the value of its property; and this defendant alleges that its said books and papers, showing in detail its expenditures on its mines and works in Mexico, and its losses from *prestamos*, seizures, interferences, and other unfriendly and illegal acts of the Mexican authorities

and people, were kept at Tayoltita, in the mining district of San Dimas, in the State of Durango, and were left at that place, within Mexican jurisdiction, with all the other property of this defendant, by this defendant's superintendent, Charles H. Exall, in the month of March, 1868, and came into the possession or control of one James or Santiago Granger, a British subject, who had been employed by this defendant's said superintendent, at Tayoltita, as clerk and bookkeeper, and who was the same person from whom, in the month of August, 1877, or shortly thereafter, it is alleged in the eleventh paragraph of the said bill of complaint, the Mexican Government obtained the letter-press copy-book and original letters in the said eleventh paragraph mentioned.

And this defendant further alleges that the price which it paid for its mines, and the amount which it spent on its works in Mexico, were proved by witnesses examined on behalf of the Mexican Government, to wit, Juan Castillo del Valle, from whom this defendant bought certain of its mines; James Granger, who kept this defendant's books for a time at Tayoltita; George Slone, who had access to the said books, and other witnesses examined on behalf of the Mexican Government, as well as by witnesses examined on behalf of this defendant.

XI.

This defendant admits the allegations in the eleventh paragraph of the said bill of complaint contained, to wit, that in the months of June and August, 1877, the Government of the said Republic of Mexico procured from J. F. Gamboa, J. M. Loaiza, and Frederick Sundell the affidavits, and from the said James Granger or some other person or persons the press-copy book and the alleged original letters in the said eleventh paragraph mentioned, and that the said affidavits, press-copy book and letters were forwarded by the said Mexican government to its

representative in Washington, and that the said representative, on the 21st day of January, 1878, advised the Secretary of State of the United States, William M. Evarts, of the existence in the Mexican legation at Washington of alleged proof of fraud in the said claim; but this defendant denies that the contents of the said affidavits, press-copy book, and letters, or the matters and things which the said writings show, are correctly set forth in the said eleventh paragraph of the complainant's bill; and this defendant denies the truth of the said affidavits, and of all statements in the alleged copies of the said Exall's letters contained in the said press-copy book, and the truth of all statements in the alleged original letters of the said Exall, so far as they contradict the said Exall's depositions which were filed on behalf of this defendant with the said Commission; and this defendant alleges that the said affidavits of J. F. Gamboa and J. M. Loaiza were procured from the said affiants by intimidation and duress on the part of the Mexican Government, and that they are false and fraudulent, so far as they contradict the depositions which were made by the said affiants on the 14th of May, 1870, and were filed with the said Commission on this defendant's behalf; that the said Mexican Government could have examined the said Gamboa and Loaiza after their depositions in support of this defendant's claim had been filed as aforesaid with the said Commission in the year 1870, while the said claim of this defendant was pending before the said Commission during the years 1871, 1872, 1873, 1874, or 1875, but purposely refrained from so doing because aware that this defendant could and would have submitted proof to the said Commission showing the falsity of such later affidavits and the duress and fraud practiced by the Mexican Government in obtaining them; that, as appears in the testimony of Carlos F. Galan (printed on page 494, side paging 249, of Complainant's Exhibit A), the depositions of the said

Gamboa and Loaiza, which had been taken as aforesaid on the 14th of May, 1870, in the United States Consulate at Mazatlan, in the Mexican State of Sinaloa, and filed with the said Commission in support of this defendant's claim, were known to the Mexican authorities; and that immediately after the said depositions were taken, the governor of the said State of Sinaloa sent for the said Gamboa and Loaiza, and, by threats and intimidation, endeavored to induce them to go before a Mexican judge and retract the testimony which they had given as aforesaid in support of this defendant's claim; that the said Gamboa and Loaiza applied for advice to the said Galan, who had been governor and chief justice of the Mexican Territory of Lower California, and who had been present and acted as translator at the taking of the said depositions, and the said Galan sent for this defendant's attorney, the late A. W. Adams, who offered to surrender the said depositions or to have them modified or amended before the United States Consul if they contained a single improper or untruthful statement, but the said Gamboa and Loaiza declared that their depositions were truthful, and that the said attorney could forward them to the said Commission then in session at Washington.

This defendant, further answering the allegations in the eleventh paragraph of the complainant's bill of complaint contained, avers that as soon as possible after the affidavits, procured as aforesaid in June, 1877, by the Mexican Government, were brought to this defendant's notice, this defendant's attorneys sought out and communicated with Isaac Sisson, before whom, in his capacity of commercial agent of the United States at Mazatlan, the said depositions of Gamboa and Loaiza on behalf of this defendant had been taken in May, 1870, and furnished the said Sisson with copies of the said affidavits of June, 1877, and the said Sisson made an affidavit denying the statements in the later affidavits of

the said Gamboa and Loaiza contained, which affidavit of the said Sisson was filed with the House Committee on Foreign Affairs prior to its report of August 5, 1886, sustaining this defendant's award.

This defendant, further answering the allegations in the said eleventh paragraph of the said bill of complaint contained, avers that certain witnesses whose depositions in support of this defendant's claim were filed with the said Commission in the year 1870, were subsequently examined in the courts of Mexico on behalf of the Mexican Government, and alleged copies of the records of such examinations were filed by the Mexican agent with the said Commission, to wit: James or Santiago Granger, August 23, October 6 and 9, 1871, and July 22 and 24, 1872, as appears on pages 417, 425, 427, 434, and 435 of the complainant's Exhibit A (top paging); Juan Castillo del Valle, September 26, 1872, *ibid*, page 445; Matias Avalos, July 24, 1872, *ibid*, page 437; that in the examination of the last-named witness, as filed by the Mexican Government with the said Commission, there were certain statements directly contradicting the deposition which he had made on the 14th of May, 1870, and which had been filed with the said Commission on this defendant's behalf, whereupon this defendant's attorney, the said A. W. Adams, now deceased, caused the said Avalos to be re-examined on the 10th of September, 1872, in the United States Consulate at Mazatlan, and filed the said re-examination with the said Commission, a copy of which is printed in complainant's Exhibit A (pages 399–401), in which re-examination the said Avalos reaffirmed his original deposition, and testified to the intimidation, fraud, and duress which had been practiced upon him by the Mexican Government in his examination on its behalf; and this defendant further alleges that the integrity and intelligence of the said Avalos were vouched for by Captain Charles B. Dahlgren in his examination before a

sub-committee of the Senate Committee on Foreign Relations as a witness on behalf of the Mexican Government in February, 1889, as appears in Report No. 2705, Senate, 50th Congress, pp. 667, 669, and 711.

And this defendant further avers that on account of the failure of the aforesaid attempt to impeach the testimony which the said Avalos had given in support of this defendant's claim before the said Commission, the Mexican Government deliberately refrained from re-examining the said Gamboa and Loaiza until the said Commission had adjourned, and until the said Government of Mexico, in violation of the said treaty, and upon the refusal of the Government of the United States by Hamilton Fish, at that time Secretary of State, to countenance or consider any proceedings tending to impair or bring in question the finality of the awards of the said Commission, had secretly entered, on the 29th of March, 1877, into a contract with one James Slaughter, a citizen of the United States, resident and engaged as a general contractor in the State of Alabama, in which contract the said Slaughter agreed "for the considera-"tions hereafter named to undertake the proof of fraud "in the claim of the La Abra Silver Mining Company, "and to this end to send an agent to Mexico for the pur-"pose of securing testimony in proof of the fraudulent "character of the said claim;" and the said Government of Mexico, in and by the said contract, bound itself, by Ignacio Mariscal, then its diplomatic representative at Washington, "to see that all facilities are [were] fur-"nished by said Government to enable him to secure "the necessary testimony," and finally to pay to the said Slaughter, "by drafts upon the national treasury of "Mexico, payable in Mexican gold, ten months after "presentation at the said treasury, a sum equal to ten "per centum of any portion of said claim which may be "waived or finally withdrawn by the proper authorities

"of the United States, or of its total amount, if it be "waived or withdrawn in the same manner, said drafts "to be drawn by the minister of Mexico at Washington "immediately upon the final waiver or withdrawal of "said claim, or any portion thereof, as the case may be, "by said authorities of the United States Government."

And this defendant further alleges that in a speech delivered in the United States Senate on the 1st of February, 1892, in support of a motion to reconsider the vote by which the act of Congress, under which this suit is brought, was passed, Senator Daniel said, referring to the said contract:

"Mr. President, if this is the manner in which international arbritation is going to be conducted hereafter by the Government of the United States, it will stink in the nostrils of mankind. Talk to me about the conscience of this country being smitten to make restitution to a government which dares to stand in the vestibule of the Senate, having broken its plighted faith and hired our own citizens and given them contingent fees out of funds which have been dedicated to our payment! There is not a respectable chancellor of the English-speaking race in Christendom who, if such a contract as that were to appear at the bar of his court, would not throw out any case that came there with it."

A copy of said contract is printed on pages 83 and 84 of Report 2705, part 2, views of minority, Senate, 50th Congress, 2d session, and certain observations are made upon it on pages 44 *et seq.* and 73 *et seq.* of the said report, to which this defendant craves leave to refer under a stipulation heretofore filed in this cause.

This defendant, further answering the allegations in the eleventh paragraph of the said bill of complaint contained, avers that under the said contract of March 29, 1877, the said Slaughter assumed charge of the prosecution of "Mexico's case" before the Congress and State

Department of the United States, as he testified before the Foreign Relations Committee of the Senate, in February, 1889 (Report No. 2705, Senate, 50th Cong., 2d sess., p. 914), and within two weeks after the execution of the said contract engaged one Alfred A. Green as his agent, and sent him, for the purposes specified in said contract, to Mexico; that the said Green had presented a claim to the said Commission against the said Government of Mexico, and had been denounced by the Mexican agent before the said Commission as "the pretended liberator of Mexico and the author of a fraudulent claim against her;" that his claim against Mexico had been rejected by the said Commission, and that he was embittered against and jealous of this defendant, and, while previously in Mexico, had been involved in a personal difficulty with this defendant's agent, the said A. W. Adams, at Mazatlan; and that, as this defendant is informed and verily believes, it was by the said Green's agency and by his false and corrupt practices, in collusion with the Mexican authorities, that the said affidavits of Gamboa, Loaiza, and Sundell were obtained; that it was notorious in the mining district of San Dimas, and known to the Mexican authorities, that this defendant's superintendent, Exall, had left all the books and papers kept at the mines and works of this defendant when he left Tayoltita in March, 1868; and that the said Green was instructed by the said Slaughter and undertook to obtain "all the records of the company," as testified to by the said Slaughter in his aforesaid examination (meaning by "the company" this defendant); and this defendant alleges that all of the said records were accessible to the Mexican Government from the time they were left in this defendant's office at Tayoltita as aforesaid, and that they could have been obtained by due diligence on the part of the Mexican authorities when they examined the said Granger on the several occasions in 1871 and 1872 here-

inbefore specified, or in the time thereafter during which the said claim was pending unheard and undetermined before the said commission until May, 1875; that when by the said Green's agency, or aided thereby, the said books and papers were delivered up or exhibited by the said Granger to the Mexican authorities, or to the said Green, a selection therefrom was made by the said authorities or by the said Green, and they refrained from sending to Washington any of the books, records, or papers of this defendant other than the press-copy book and the letters in the said eleventh paragraph of the bill of complaint described, because among the said records were this defendant's books of account containing entries of its expenditures at the mines and of the losses it suffered from the unlawful acts of the Mexican authorities.

This defendant, further answering the allegations in the said eleventh paragraph of the said bill of complaint contained, denies that the said press-copy book and the letters and reports in the said eleventh paragraph mentioned show, or that the fact was, that this defendant held control of the said mines until August, 1868, and then abandoned the same for lack of means to work them, and because such working was impossible, and not because of any illegal and unfriendly acts on the part of the Mexican authorities and people; and this defendant denies that the said claim of this defendant was false and fraudulent, and that all or any of the material testimony in support of said claim was untrue, and this defendant alleges that, exclusive of the said Exall's depositions, there was abundance of unimpeached and unimpeachable testimony before the umpire to justify the said award, and that this was the conclusion of the House Committee on Foreign Affairs after an examination of the said press-copy book and original letters, as stated in Report No. 3474, H. R., Forty-ninth Congress, 1st session, cited on pages 41 and 42 of Report 2705, part 2, hereinbefore referred to; and this

defendant further alleges that the affidavit procured as aforesaid from the said Sundell is almost entirely hearsay, and shows on its face that he was at San Dimas, within Mexican jurisdiction, in 1871, and remained there while the said Commission was in session, and that he could have been examined during the years 1872, 1873, 1874, or 1875, as a witness on behalf of the said Mexican Government before the said claim was determined; and this defendant denies the truth of the allegations in the said Sundell's affidavit contained so far as they tend to surcharge or impeach the said award or to contradict the evidence on which it was rendered.

XII.

This defendant admits the allegation in the twelfth paragraph of the complainant's bill of complaint contained, to wit, that on the 18th day of June, 1878, an act of the Congress of the United States was approved containing the provisions in the said twelfth paragraph of the bill recited, but this defendant denies the allegation in the said twelfth paragraph contained that this defendant had purposely refrained from securing and offering on the trial of its said claim the testimony of Julius A. de Lagnel, who had been superintendent of its mines from about May, 1865, to about May, 1867; and this defendant also denies that it well knew the whereabouts of the said de Lagnel and could have easily procured his testimony; and this defendant alleges that it made diligent inquiry to find the said de Lagnel while the said Commission was in session, for the purpose of obtaining his deposition, but without avail, and that this defendant's president, George C. Collins, in his deposition which was taken in support of this defendant's said claim on the 23d day of May, 1874, and which is printed on pages 453 and 454 of the complainant's Exhibit A, testified to the said unsuccessful efforts to find the said de Lagnel;

and this defendant also alleges that it has since appeared by the examination of the said de Lagnel himself, on behalf of the Mexican Government, at San Francisco, on the 2d day of December, 1878, printed on pages 504 and 505 of the complainant's Exhibit B, that from the fall of 1870 till the date of his aforesaid examination he had been employed as purser on a steamship running between San Francisco and China; and this defendant further alleges that the Mexican authorities well knew that the said de Lagnel had been superintendent for this defendant at Tayoltita in 1866 and 1867, and that the said authorities had equal or better facilities for ascertaining the whereabouts of the said de Lagnel and taking his deposition while the said claim was pending before the said Commission.

This defendant, further answering the allegations in the said twelfth paragraph of the complainant's bill of complaint contained, admits that the Mexican Government procured the affidavit mentioned in the said twelfth paragraph from the said de Lagnel, but denies that he identified the said press-copy book as genuine, so far as the alleged copies of the said Exall's letters therein contained are concerned; and this defendant avers that the said de Lagnel deposed in his said affidavit that he was unable to recognize or identify the said Exall's handwriting, and was not familiar with it, as by reference to pages 504 and 505 of the Complainant's Exhibit B will appear.

This defendant, further answering the said twelfth paragraph of the complainant's bill, admits that William M. Evarts, as Secretary of State, and by direction of the President of the United States, and in accordance with the request of the said act of Congress of June 18, 1878, investigated the charges and so-called proofs of fraud which had been submitted to him by the Mexican Government, and reported the results of his investigation to

the President, by whom they were communicated to Congress, and that the extracts from the said report in the said twelfth paragraph of the bill contained are correctly quoted; but this defendant alleges that a portion of the said report of Mr. Secretary Evarts, having an important bearing on the question whether the said award should be reopened or not, is omitted by the complainant, to wit, as follows:

"First. I am of the opinion that, as between the United States and Mexico, the latter Government has no right to complain of the conduct of these claims before the tribunal of commissioners and umpire provided by the Convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity in time and after notice to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measures, and means o the defense against the same.

"I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico."

This defendant, further answering, alleges that Mr. Secretary Evarts made his final report to the President in regard to this defendant's award on the 13th of April, 1880, and that the same was thereupon approved by the President and communicated by him to Congress (Ex. Doc. No. 150, Sen., 46th Cong., 2d Sess.); that the said final report is ignored in the preamble of the act under which this suit is brought, and is not alluded to in the complainant's bill of complaint, although references are made in the said act and in the said complaint to the earlier reports of the said Secretary; that the said Secretary recommended in his said final report that the award

in favor of this defendant should be accepted as a finality, and should be paid to this defendant; and that the said Secretary, under instructions from the President of the United States, thereupon paid to this defendant its distributive share of the payments made up to that time by the Mexican Government under the said treaty.

And this defendant further alleges that the proceedings subsequent to the said final report of Mr. Secretary Evarts and its approval by President Hayes in respect of the said award are not correctly stated by the complainant; and this defendant avers that the Judiciary Committee of the Senate, of which at that time Messrs. Thurman, Bayard, McDonald, Garland, Lamar, Davis, Edmunds, Conkling, and Carpenter were members, having taken the message of the President (Ex. Doc. No. 150, Sen., 46th Cong., 2d sess.), containing the said final report of Mr. Secretary Evarts into consideration in connection with a bill (Senate, 1682), similar to the act under which this suit is brought, and including also the Weil award, made a unanimous report (No. 172, Sen., 46th Cong., 2d sess., June 10, 1880) adverse to the said bill, and recommended its indefinite postponement, which was the same day agreed to by the Senate on the ground that the said bill proposed—

"To withdraw these two claims from the dominion of international jurisdiction and place them before a tribunal organized and existing solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaint that are known to exist on behalf of other citizens of the United States whose claims (against the Mexican Government), for various causes, failed to receive favorable consideration by the said Commission under the treaty creating the Commission."

And this defendant alleges that it was also held unanimously by the said Judiciary Committee in the said report, and approved by the Senate of the United States,

nemine contradicente, that by adopting the conclusions of Mr. Secretary Evarts in respect of the said award in favor of this defendant, and by communicating those conclusions to the Senate, to wit (1), that the main imputation against this defendant was of "fraudulent exaggeration of the claim in its measure of damages;" (2) that any further investigation of the said claim should be confined to such alleged exaggeration; and (3), that upon a careful estimate as to any probable or just reduction of the claim from such further investigation, should Congress institute it, this defendant's distributive share of the installments then received from Mexico might properly be paid to this defendant, and by actually making such payment to this defendant, the President of the United States had "virtually determined the question submitted to the Executive Department by the said fifth section (of the act of June 18, 1878), so far as that claim is involved."

This defendant further alleges that it was in consequence of the said action of the Senate disapproving of the submission of an international award to a municipal court and ordering the indefinite postponement of the said bill as aforesaid, that the treaty hereinbefore mentioned for a rehearing of this defendant's claim, and also of the claim of the said Weil, by a new International Commission, was negotiated between Mr. Secretary Frelinghuysen, representing the United States, and Mr. Romero, representing Mexico, and submitted to the Senate for its advice and consent on the 20th of July, 1882, as stated by Mr. Bayard in his report of May 6, 1886, to the President in the following language (Ex. Doc. No. 140, Senate, 49th Congress, 1st session, page 4):

"The substance of this report [of the Senate Judiciary Committee of June 10, 1880] is that the result of an arbitration authorized by an international convention should not be defeated or controlled by the separate action of

one of the two Governments, but that the proper remedy was in a new convention in which provision should be made for doing justice to all claimants."

This defendant further alleges that the said new treaty did not contain any provision for rehearing any of the claims of citizens of the United States against Mexico which had been disallowed by the said Commission under the original treaty of July 4, 1868; and that it was known to many members of the Senate that certain of such claimants, including the Carmen and Rosario Mining Company, had petitioned the House of Representatives for a rehearing, or other relief, upon allegations that they had been prevented from properly presenting their just claims against Mexico to the said Commission by the fraudulent interposition and other corrupt practices of the Mexican authorities, and that their petition had been denied on the ground that it was not within the province of Congress to interfere in such international reclamations, and that the remedy should be sought from the Executive; and this defendant alleges on information and belief, that the one-sided and inequitable character of the said new treaty in this respect was one of the reasons why it was rejected by the Senate.

This defendant, further answering, shows as another important fact omitted in the history of the case contained in the complainant's bill, that after the rejection of the said new treaty by the Senate, Mr. Bayard, as Secretary of State, expressed the following opinion in the aforesaid report which he made to the President, and which the President communicated on May 11th, 1886, to Congress, in regard to the obligation of the Mexican Government to accept the decision of the Senate against reopening the said awards as final:

"It seems proper here to observe that by the voluntary negotiation of this second treaty, Mexico submitted the question whether these claims should be readjudged or

no to the treaty-making power of the United States, of which it was well known that two-thirds of the Senate was an essential part, and that the relief sought from the effect of the former treaty could only be secured by obtaining such a constitutional majority in its favor."

This defendant further alleges that in the said report made by Mr. Secretary Bayard to the President and by the President communicated as aforesaid to Congress, the sense in which the Executive understood the then recent decision of the Supreme Court in the case of *Key* v. *Frelinghuysen* (110 U. S. 63), as affecting the right of this defendant to the payment of the money received from the Mexican Government on account of the said award, was expressed as follows:

"Suits had been instituted in the Supreme Court of the District of Columbia by individuals interested in the claims in question to obtain writs of mandamus requiring the Secretary of State to pay to the several relators their proportions of the installments of 1882.

"These cases came upon an appeal before the Supreme Court of the United States, and at October term, 1883, the history of both of these claims was fully recited by the court in delivering their opinion; at the close of which the following language was employed by the Chief Justice:

"'Under these circumstances, it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators *until the diplomatic negotiations between the two governments on the subject are finally concluded.**

* * * * * *

"'All we decide is that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that *as long as the two governments are treating on the questions involved** he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State.'"

* The italics are Mr. Secretary Bayard's.

This defendant further alleges that in the said report the opinion of the Executive in regard to the propriety or expediency of any further attempt to reopen the said award by treaty was communicated to Congress, as follows:

"There can be no doubt that the power to institute new negotiations between the two countries rests in the discretion of the Executive, yet that discretion must be instructed by the history of the proceedings to which I have alluded; and in the light of the investigations and report made by your predecessors in office, and the ample knowledge of the facts long since and fully laid before both houses of Congress, and especially the Senate, whose action upon a proposed law (Senate bill No. 1682, aforesaid), and subsequently upon a treaty, I have herein fully related, I am not informed that you would consider it would be proper or expedient under the circumstances again to submit, through the forms of a treaty, further propositions for a rehearing in the two cases in view of the late action of the Senate of the United States, whose adverse judgment, with full information of the facts, has been constitutionally declared."

And this defendant further alleges that in the said report, communicated in a message of the President to the Senate and House of Representatives, as aforesaid, the Executive Department of the Government expressed its opinion that the request contained in the said act of Congress of June 18, 1878, limited the retrial of this defendant's claim to the diplomatic or international proceedings which had been brought to a close in the Senate, as hereinbefore set forth. On this point, Mr. Secretary Bayard said:

"The act of Congress of June 18, 1878, contains a request that the President should investigate any charge of fraud presented by the Mexican Government against the claims in question, and that 'if he should be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity should

require that these awards, or either of them, should be reopened and the cases retried, it should be lawful for him to withhold payment of said awards, or either of them, until such case or cases should be retried and decided *in such manner as the Governments of the United States and Mexico may agree.*'* The retrial of these cases was, therefore, to be subject to such international arrangement as might be agreed upon between the Governments of the United States and Mexico."

This defendant, further answering, alleges that the aforesaid report concluded as follows:

"This last-mentioned act of Congress contained the further provision stated, not additionally, but in the alternative, to those above recited, 'or until Congress shall otherwise direct.'

"To relieve the action of our Government from any ambiguity of legislative expression, or the Executive from any uncertainty as to his line of duty in relation to the awards in favor of Benjamin Weil and La Abra Silver Mining Company under the treaty with Mexico promulgated February, 1879, I suggest that the attention of Congress should be earnestly invoked to the consideration of the present status of these claims referred to, and the duty of the Executive under an existing treaty, to which the force and effect of paramount law is given by the Constitution, in the event of the adjournment of the two Houses without further action in reference thereto."

This defendant, further answering, alleges that it was largely owing to the efforts and false representations of the said James E. Slaughter and of certain persons employed by him under the aforesaid contract entered into on March 29, 1877, between him and the Mexican Government, that the aforesaid provisions for the investigation of Mexico's charges against this defendant and the withholding of payment on the said award were inserted in the said act of June 18, 1878, while it was upon its passage in Congress, and that no suggestion for

* The italics are Mr. Secretary Bayard's.

any such provision was contained in the communication made by Mr. Secretary Evarts on the 6th of November, 1877, to Mr. Swann, who was at that time chairman of the House Committee on Foreign Affairs, in which communication the said Secretary of State explained that in the ordinary course of the Government an act of Congress would not be necessary to enable the President to make a distribution of funds so received upon such international awards, but that in this case the Mexican Government in accordance with a provision of the said treaty, had deducted the sum total of the awards against the United States, and in favor of Mexican citizens, from the sum total of the awards against Mexico and in favor of United States citizens, and was therefore paying only the difference between the two aggregates; so that a Congressional appropriation would be required to make good the sum so deducted and retained by the Mexican Government.

This defendant, further answering, alleges that shortly after the publication of the message of the President to Congress containing the aforesaid report of Mr. Secretary Bayard, the said Slaughter and the persons employed by him under his aforesaid contract with the Mexican Government caused a bill to be introduced in the House of Representatives (H. R. 8122) similar to the act under which this suit is brought, and the said bill was referred to the Committee on Foreign Affairs, together with a copy of all the original testimony which was before the said Commission, and the so-called newly-discovered evidence, including the said press-copy book and the said original letters of Exall and Garth, and the said affidavits of Gamboa, Loaiza, and Sundell, and the said Committee, having carefully considered the same, and having heard counsel on both sides, reported, on the 5th of August, 1886, by a majority of ten to three, adversely to the said bill, on the merits of this defendant's claim, although expressly asserting the power of Congress, as distinguished

from the Executive, to waive the benefit of the said treaty and reopen the said award; and in regard to the contradictions between the alleged letters of Exall and his testimony before the said Commission the said committee reported as follows (Report No. 3474, H. R., 49th Congress, 1st Sess., p. 5):

"1. Superintendent Exall's contradictions of his testimony as revealed in his letters, now produced for the first time, are given great importance, and stress is laid upon them as imputing that his testimony was false and the claims of the company purely pretentious.

"It should, however, be remembered that Exall was acting for his own interest, and that his letters conformed to what that interest seemed to require. He was a creditor of the company. He was in Mexico, and needed money, and as an inducement to the company to send him money he apparently colored the facts he recited in his newly-presented letters, under the impulses of the moment, and described conditions to suit his necessities. We can not justly hold the company responsible for his course any more than we could justly hold a nation responsible for the conduct of a traitor. True, his testimony is apparently discredited, but he is dead, and explanations which, if living, he ought to make are now impossible. But did this case rest upon his testimony it would be nevertheless discredited, and, in our opinion, it should be disregarded; and, disregarding it, there is an abundance of sound testimony to sustain the award."

And this defendant alleges that the said Foreign Affairs Committee distinguished between the claim of the said Weil and the claim of this defendant, and between the newly-discovered evidence in regard to the claim of the said Weil and the newly-discovered evidence in regard to the claim of this defendant, and expressed their conclusions as to the alleged exaggeration of damages on page 3 of the said report as follows:

"A majority of this committee, believing that the evidence submitted in one case before us (known as the Weil claim) discloses a palpable subversion of justice,

believing that the evidence now presented in that case, and unanswered, puts it in the light of a pure fabrication, have reported a bill to meet the requirements of high and honorable dealing. The United States should refuse to allow its citizens to receive a benefit at the expense of another nation under such a cloud of impeachment as the new evidence in the Weil case throws upon it. But in this case no such evidence as that adduced in the Weil case is presented.

"Undoubtedly the newly-discovered evidence in this case shows duplicity on the part of some of the witnesses of the claimants. Undoubtedly some of the testimony that was before Sir Edward Thornton, the umpire, is contradicted, and apparently impugned by the after-discovered documents and affidavits. Undoubtedly some of the items of the large claim asserted against Mexico by the La Abra Company are shown to have been exaggerated, and others unfounded, but this remains when all that can be reasonably said in favor of the interference proposed has been considered: *that there was ample evidence before Sir Edward Thornton, that is not impugned by any new evidence, to have sustained and warranted his award;** that the award did *not** embrace damages on account of the items that have been surcharged or apparently falsified; that that award was far below what was claimed; that it was far below in amount the damages which in the opinion of unimpugned witnesses the claimant's company suffered; that it did not embrace speculative damages; that the mistreatment of the company by Mexican officials and people is proved by their own testimony, and that, conceding all that by reasonable intendment the newly-discovered evidence proves, the award made had ample foundation in testimony not successfully impeached, and was not in excess of fair compensation for losses suffered according to that testimony."

This defendant, further answering, alleges that the 49th Congress adjourned its first session without taking any action on the said bill (H. R., 8122), which had been adversely reported by the said Foreign Affairs Commit-

* The italics are the committee's.

tee on the 5th of August, 1886, as aforesaid, and that no action was taken on the said bill during the second session of the said Congress, and that notwithstanding the declaration contained in the aforesaid report of Mr. Secretary Bayard, and communicated in a message of the President to Congress, in regard to "the duty of the "Executive under an existing treaty, to which the force "and effect of paramount law is given by the Constitu- "tion, in the event of the adjournment of the two houses "without further action in reference thereto," the Executive continued to withhold from this defendant the moneys received by the Secretary of State from the Government of Mexico on account of this defendant's said award.

XIII.

This defendant, answering the allegations in the thirteenth paragraph of the complainant's bill of complaint contained, admits the passage of the Senate resolution of August 30, 1888, for the examination of witnesses and the proceedings thereunder as in the said thirteenth paragraph stated, and also that a report was made on the 1st day of March, 1889, by the Committee on Foreign Relations, containing the language in the said thirteenth paragraph quoted, but this defendant denies the truth and correctness of the statements in the said quotation contained, and alleges that the testimony taken by the sub-committee of the said Senate committee, instead of showing, as alleged in the said report, that the abandonment of the property and the failure of this defendant were wholly due to the poverty of the mines and the consequent financial embarrassment, shows, and so the truth is, that one of this defendant's mines, to wit, La Abra mine, was considered of such value and promise that since its abandonment by this defendant in March, 1868, one of the most experienced and skillful of Mexican

miners, to wit, Ignacio Manjarres, had spent about fifty thousand dollars in tunneling the said mine, and was still at work on the said tunnel at the time the said testimony was taken in the year 1889; and this defendant alleges that the said Julius de Lagnel, one of the witnesses for the Mexican Government examined by the said sub-committee in the year 1889, testified that while he was superintendent of this defendant's mines at Tayoltita he remembered "the wild excitement among the miners, because when the ore was brought down you could see the gold in streaks as large as a big diaper-pin head—little pellets of gold along like fine shot, so as to leave a line of gold;" and when Senator Brown inquired of this witness for the Mexican Government—"That, then, was very rich gold ore?"—the witness replied that he took it for granted that it was rich, and then proceeded to explain how the miners had struck "this valuable ore."

This defendant, further answering the said thirteenth paragraph of the complainant's bill, alleges that the said report of the Senate Committee on Foreign Relations, although ostensibly a majority report, was the work of only one or two members of the said committee; that it contained material errors of fact which were caused by misrepresentations on the part of persons employed by the Mexican Government as aforesaid, and which were pointed out and corrected in the said minority report (No. 2705, part 2, Sen., 50th Cong., 2d sess.) hereinbefore cited; that the chairman of the said committee did not concur in the said majority report, but in a letter written in reply to an inquiry of this defendant's counsel, after the said report was published, and also in his place in the Senate when the act under which this suit is brought was upon its passage, expressed the opinion that the said award in favor of this defendant should be carried into effect.

And this defendant further alleges that the letter of the said chairman of the Foreign Relations Committee

was printed in a message from the President to Congress (Ex. Doc. No. 107, Sen., 51st Cong., 1st sess., p. 9), and reads as follows:

"SENATE CHAMBER, WASHINGTON, *April 8, 1889.*

"GENTLEMEN: In answer to your note of the 6th, I have to advise you that I have not been able to read the minority report by Senator Brown in the matter of the La Abra award, as my time is so constantly occupied by pressing immediate duties. I have not been able to give to the subject-matter the consideration necessary to say whether I should approve either the majority or the minority report.

"Only this I can say, that I have always regarded the arbitration of this case as final and conclusive, not to be reopened, and that it is better, in any aspect of the real facts in respect to the claim, that the award should be exactly carried out. I have thought, and still think, that it is more important to give force and effect to an award solemnly made than to scratch over the ashes to find imperfections or insufficiency of proof upon which the award was founded. Unless convinced otherwise, I will vote for insisting upon the award.

"Very truly, yours,

"JOHN SHERMAN."

And this defendant further alleges that the aforesaid remarks of the said chairman of the Foreign Relations Committee, made in his place in the Senate, are printed in the *Congressional Record* of February 2, 1892, page 783, and read as follows:

"Mr. SHERMAN. All I wish to say in addition is that I have participated somewhat in the past in the discussion of these claims, but I do not intend to do so now. My opinion is still, as it was before, that the Weil case seems to be a fraud from beginning to end, and, therefore, any measure of justice that may be done to Mexico I should be willing to vote for.

"Mr. BUTLER. We can not hear the Senator.

"Mr. SHERMAN. I repeat that so far as the Weil case is concerned I have always stated that that was a clear case

of deliberate fraud founded upon perjury, and, therefore, I would have no hesitation in voting for the refunding of the money in that case.

"In regard to the La Abra case I have taken a somewhat different view. I believe it a case of exaggerated damages, but it seems to me the Government of Mexico ought to have taken the pains to have established these facts, which they could have done. With all the power of a government there and being perfectly familiar with the local matters, they should have made their defense before Sir Edward Thornton, and thus avoided this controversy.

"As they did not do it, I believe it would be better for the public interests and better for an example of internation arbitration that the award should stand and be executed in full faith.

"I have no other feeling on that question. If present at the time when the vote is taken (and I regret to say that I fear I shall not be), I should probably vote against the refunding of the award in the La Abra case for the reason I have given."

This defendant further alleges that the 50th and 51st Congresses having adjourned without taking any action in respect of the said award, and the Executive having continued to withhold payment thereon, and the contingent compensation promised to be paid in the said contract being still unearned, the persons so employed as aforesaid by the Mexican Government caused the bill, now the act under which this suit is brought, to be again introduced in the 52d Congress.

And this defendant, further answering, alleges that although the House Committee on Foreign Affairs recommended the passage of the said bill, it did not do so upon the ground that the said company, its officers or stockholders, had been guilty of fraud, or that the award was unfounded, but on the contrary, the said Committee in its report (No. 1143, H. R., 52d Cong., 1st sess., p. 8) remarked:

"This committee does not intend to impugn the integrity of the persons connected with the company nor constitute an opinion on the merits of the case. The stockholders doubtless invested their money in good faith, and it is fair to assume that the first superintendent, Bartholow, an important witness before the Commission, believed that the mines were valuable, and when he left them had high hopes as to their future."

XIV.

This defendant, answering the allegations in the fourteenth paragraph of the complainant's bill of complaint contained, admits that on the 28th day of December, 1892, the President of the United States approved a bill which had then passed both Houses of Congress, by which the Attorney General is directed to bring suit against this defendant as in the said fourteenth paragraph of the bill of complaint alleged, but this defendant denies the allegation in the said fourteenth paragraph contained, that the said act of Congress so approved as aforesaid conferred, in law, full jurisdiction upon this honorable court to hear and determine such suit and to make all interlocutory and final decrees therein, and to enforce the same by injunction or any proper final process; and this defendant alleges that the said act is invalid because it was signed by the President during an adjournment of Congress, and furthermore that this honorable court is without jurisdiction in respect of the subject-matter of this suit, and that such subject-matter is not within the jurisdiction of this honorable court or of any municipal court of the two sovereign parties to the said treaty of July 4, 1868, between the United States and Mexico, but appertains exclusively to the functions of the executive department of the Government in the conduct of the intercourse of the United States with foreign nations, and that Congress has no power to confer such jurisdiction upon this honorable court, and also that the juris-

diction with which the said act attempts to invest this honorable court, and the Supreme Court of the United States on appeal, is not judicial power in the sense of the Constitution of the United States, inasmuch as the final decree of this honorable court, or of the Supreme Court on appeal, if it coerced the President, and he could be compelled by final process to execute it and return the money remaining undistributed in his custody or control to the Mexican Government, would be an encroachment upon the functions of the executive department of the Government and a usurpation of its authority, and inasmuch as such final decree, if it could not be enforced by process of the court and was dependent for its effect and execution upon the discretion of the President, would lack finality, which is an essential element of judgments of the Supreme Court.

And this defendant further alleges that the Government of Mexico is the real party plaintiff interested in this suit; that the United States has no pecuniary or other interest in the subject-matter of this suit sufficient to enable the United States to maintain the said suit as party plaintiff; that in the proceedings in Congress, seeking to reopen the said award, and in the Department of State, to prevent the distribution of the moneys received on account of the said award, the Mexican Government has been the moving party and actively represented by counsel, and by other agents, under the aforesaid contract, and that a final decree against this defendant in this suit would inure exclusively to the pecuniary benefit of the said Mexican Government and of its aforesaid employés under its aforesaid contract with the said Slaughter.

And this defendant, further answering the complainant's bill of complaint, alleges that the Mexican Government, on account of its aforesaid corrupt and fraudulent practices, could not successfully maintain a suit in equity

for the recovery of the said money in its own name, and is not entitled to the benefit of a suit in equity for such recovery when brought in the name of the United States; and also that the said Mexican Government has been guilty of laches, inasmuch as if its charges of fraud were true it could have obtained judicial proof of such fraud by prosecuting the alleged false witnesses who were within its jurisdiction for perjury, and could have brought suit in the courts of the United States against this defendant to set aside the said award for fraud in the year 1877, when its alleged new evidence was procured, or within a reasonable time thereafter; and this defendant alleges that the said government employed counsel in Washington and made other preparations to bring such suit in the year 1880, but afterwards decided to enter into negotiations for a treaty with the United States as aforesaid, for the rehearing of this defendant's claim.

XV.

This defendant denies each and every allegation in the fifteenth paragraph of the said bill of complaint contained.

XVI.

This defendant admits that the complainant is in possession of the press-copy book, affidavits, letters, and documentary evidence in the eleventh paragraph of the complainant's bill mentioned, and also that copies thereof have been printed under authority of Congress, as stated in the sixteenth paragraph of the said bill of complaint; but in answer and objection to the prayer of the complainant in the said sixteenth paragraph contained, to wit, that such copies filed with the said bill and marked Exhibit B may be taken and considered as part of the said bill, this defendant alleges that the originals should be

filed with the bill so that this defendant's counsel may examine the same, and that they should be and remain subject to any and all objections that this defendant may be advised to make in respect to their relevancy, materiality, or competency as evidence for the complainant in this suit.

And this defendant denies each and all of the other allegations in the said sixteenth paragraph contained, and alleges that this defendant's said superintendent, Exall, shortly before he abandoned the defendant's mines and property at Tayoltita, and having committed no offense against the laws of Mexico, was unlawfully arrested, on the 7th day of January, 1868, and imprisoned for several days thereafter, by one of the local Mexican magistrates at that place without warrant or trial; and the prison in which the said superintendent was confined was a filthy and vermin-infested hut which had been used as a pest-house, and was dangerous to the health and life of the said superintendent on account of the horrible and infectious diseases from which the persons who had been kept in the said pest-house had suffered.

XVII.

This defendant admits that on or about the 9th day of December, 1869, it made and entered into the contract with Alonzo W. Adams, mentioned in the 17th paragraph of the complainant's said bill of complaint; and this defendant alleges that under the said contract the said Adams made two journeys to Mexico and spent much of his time in that country between the date of the said contract and the fall of 1872, and that by great diligence, perseverance, and courage he obtained the evidence of the witnesses who were examined in Mexico and whose testimony was filed with the said Commission in support of this defendant's claim; and this defendant alleges that neither the said Adams nor any other person, with its

knowledge or consent or with the knowledge or consent of any of its officers, ever obtained any false, fraudulent, or corrupt testimony from any witness in support of this defendant's claim; and this defendant, further answering the allegations in the said seventeenth paragraph contained, admits that it made the assignments therein stated to have been made by it, or its proper officers, except the alleged assignment to the late Samuel C. Pomeroy, deceased, which last-named assignment this defendant denies ever having made in whole or part; and as to the other allegations in the said seventeenth paragraph contained, this defendant, because not possessed of knowledge sufficient to enable it so to do, neither admits nor denies the same, but requires that they shall be proved if they shall be held to be material or relevant to the issues of this suit.

XVIII.

This defendant, in answer to the eighteenth paragraph of the plaintiff's bill of complaint, praying discovery, alleges that on or about the 18th day of May, 1889, it assigned for a good and sufficient consideration an interest to the amount of thirty thousand dollars in the said award to one John Birdsall, now deceased, and that, as this defendant is informed and verily believes, his administratrix, one Annie Birdsall, of Glen Cove, in the county of Queens, State of New York, claims the benefit of the said assignment.

XIX.

This defendant, in answer to the nineteenth paragraph of the plaintiff's bill of complaint, admits that it claims that it is the duty of the plaintiff to pay over to this defendant and its assigns the proceeds of the said award remaining undistributed in the plaintiff's possession.

And this defendant, further answering, positively and expressly denies every averment in the said bill of complaint contained, which charges or tends to charge this defendant, or any of its officers, agents, or other persons acting under or by its authority, with any fraud, conspiracy, or corrupt or fraudulent practices, or other wrong-doing, in obtaining the said award, or in obtaining the evidence on which the said award was rendered, or in or about any of the proceedings leading to or connected with the rendition of the said award in favor of this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed.

LA ABRA SILVER MINING COMPANY,
By JAMES G. BALDWIN, *President.* [L. S.]

Attest:

SUMNER STOW ELY,
Secretary of La Abra Silver Mining Company.

City, County, and State of New York, *ss.*

James G. Baldwin, being duly sworn, on his oath saith that he is president of La Abra Silver Mining Company, defendant in the above-entitled suit; that he has read the foregoing answer of the said defendant and knows its contents, and says upon information and belief that all the matters and things in the said answer contained are true.

(Signed) James G. Baldwin.

Subscribed and sworn to before me this day of May, A. D. 1894.

[L. S.] *Notary Public.*

County of Erie, } *ss.:*
State of Pennsylvania, }

Sumner Stow Ely, being duly sworn, on his oath saith that he is secretary and treasurer of La Abra Silver Mining Company, defendant in the above-entitled suit, and that he is and was at the times mentioned in the foregoing answer attorney of the said company, and that he is himself one of the defendants in the said suit; that he has read the foregoing answer of the said company and knows its contents, and says on information and belief that all the matters and things in the said answer contained are true.

(Signed) Sumner Stow Ely.

Subscribed and sworn to before me this day of May, A. D. 1894.

[L. S.] *Notary Public.*

COURT OF CLAIMS.

EQUITY. No. 17917.

THE UNITED STATES v. LA ABRA SILVER MINING CO. ET AL.

COMPLAINANT'S EVIDENCE.

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ROBERT B. LINES,
Special Assistant to Attorney-General.

Notice to produce documents.

To CRAMMOND KENNEDY, Esq.,
Solicitor for defendant La Abra Silver Mining Co.

SIR: Please take notice that on the trial of this cause the above-named defendant will be required to produce the originals of all books kept by said company, or its officers or agents, from the year 1865 to 1868, inclusive, having relation to its business, and of all reports made during said

period by its officers and agents to the said company, and of all letters and correspondence between said company and its officers and agents during said period, and especially all letters from the superintendents of said company, Thomas J. Bartholow, Julius A. de Lagnel, and Charles H. Exall, to David J. Garth, treasurer of said company, and of all letters from said David J. Garth, treasurer, to said superintendent, or any of them written during said period. And in default of such production parol and secondary evidence will be offered by the complainant of the contents of said books, reports, letters, and correspondence.

ROBERT B. LANES,
Special Asst. to the Attorney-General.

WASHINGTON, D. C., *June* 5, 1894.

Service of the above notice accepted this sixth day of June, 1894, and the above-named defendant says that neither it nor any of its present officers or agents have now or have had since the death of Mr. Worthington, former secretary of said company in the year 1871, or since his removal from New York a year or two previously, possession of any of the books (except its stock-certificate book) kept at its office in New York from the year 1865 to the year 1868, inclusive, or of any reports, letters, or correspondence addressed to its officers in New York within that time, and that neither the said company, its officers, or agents know the whereabouts of any such books, reports, letters, or correspondence, except said stock-certificate book.

In regard to the books and records, letters, and correspondence of the company that were kept in its office at Tayultita, defendant says that they were left at that place by the defendant's last superintendent (Exall) when he abandoned the defendant's property in February or March, 1868, and that since that time neither the defendant nor any of its officers or agents has had possession or control of such books or records, or any of them, except the exhibits attached to Granger's deposition, taken on defendant's behalf May 14, 1870, and subsequently submitted to the United States and Mexican Claims Commission.

CRAMMOND KENNEDY,
Solr. for La Abra Silver Mining Company.

Documentary evidence.

It is hereby stipulated by and between counsel for the United States and counsel for La Abra Silver Mining Company that, in the absence of William P. Tuttle, who was expected to be present this day for examination, documentary evidence shall be taken on the part of the United States, by consent, before John A. Shields, United States commissioner.

Counsel for the United States offers in evidence copies of the annual reports of La Abra Silver Mining Company dated January 16th, 1866, November 20th, 1867, and January 20th, 1868, which copies were certified under seal of the court, on the 14th day of November, 1878, by Henry A. Gumbleton, county clerk, to be correct copies of said reports from the records and files in the office of the clerk of the county of New York.

Counsel for La Abra Silver Mining Company objects to their reception in evidence, on the ground that they are immaterial and irrelevant.

Copy dated January 16th, 1866, marked "Ex. 1, J. A. S., U. S. Com'r, June 6/94."

Copy dated November 20th, 1867, marked "Ex. 2, J. A. S., U. S. Com'r, June 6/94."

Copy dated January 20th, 1868, marked "Ex. 3, J. A. S., U. S. Com'r, June 6/94."

Counsel for the United States further offers in evidence copy of judgment roll from the records of the supreme court of the county of Kings, New York, in the suit of John H. Garth *vs.* La Abra Silver Mining Company, which copy is certified under the seal of said court by John Delmar, clerk of said court, under date of December 14th, 1878.

Counsel for La Abra Silver Mining Company objects to its reception in evidence, on the ground that it is immaterial and irrelevant, and also that it is incompetent, because it is *res inter alios acta*.

Copy marked "Ex. 8, J. A. S., U. S. Com'r, June 6/94."

Reports of La Abra Silver Mining Company for 1866, 1867, *and* 1868.

Annual report for 1866.

Annual report of La Abra Silver Mining Company, made this sixteenth day of January, 1866, as required by law, as follows:

The capital stock of said company is three hundred thousand dollars, say..	$300,000
Dividend shares of one hundred dollars each.	
The amount actually paid in is seventy-six thousand dollars, say.....	76,000
The company have issued in payment for La Abra silver mine twenty-two thousand dollars of stock of the company, say	22,000

The company have no indebtedness ascertained.

WM. L. HEARN, *Prest.*
LEWIS MORRIS,
WESTON J. BIRCH,
D. J. GARTH,
S. P. NUCKOLLS,
H. P. BENNET,
Trustees.

CITY AND COUNTY OF NEW YORK, *ss:*

William L. Hearn, being duly sworn, says that he is the president of La Abra Silver Mining Company above named, and that the foregoing report by him and others subscribed is correct and true.

WM. L. HEARN.

Sworn to before me January 17, 1866.

JOHN M. SCRIBNER, Jr.,
Notary Public.

(Endorsed:) Filed, Jany. 18, 1866.

Amount of capital stock	$300,000
Amount of capital stock paid in	157,000
Amount of existing debts of the company not exceeding	70,000

Nov. 20th, 1867.

Geo. C. Collins, *Prest.*
D. J. Garth,
W. N. Worthington,
Jno. H. Garth,
Trustees.

City and County of New York, *ss:*

Geo. C. Collins, being duly sworn says that he is the president of La Abra Silver Mining Company above named, and that the foregoing report and the several matters therein contained are and each of them is true.

Geo. C. Collins,
Prest.

Sworn to before me November 23, 1867.

Henry Snell,
Notary Public, N. Y. City and Co.

(Endorsed:) Filed Nov. 25, 1867.

All which which we have caused by these presents to be exemplified and the seal of our said county to be hereunto affixed.

Witness Hon. Charles P. Daly, presiding judge of our said court of common pleas for the city and county of New York, at the court-house, in the city of New York, the fourteenth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and in the one hundred and third year of the Independence of the United States.

Henry A. Gumbleton,
County Clerk.

I, Charles P. Daly, judge and presiding judge of the court of common pleas for the city and county of New York, being the court of the county of New York, in the State of New York, do hereby certify that Henry A. Gumbleton, whose name is subscribed to the preceding exemplification, is the clerk of the county of New York, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplication, is the seal of the said county of New York, and that the said attestation thereof is in due form of law, and by the proper officer.

Dated New York, Nov 14th, 1878.

Chas. P. Daly.

State of New York,
City and County of New York, ss:

I, Nathaniel Jarvis, jr., clerk of the court of common pleas for the city and county of New York, do hereby certify that Charles P. Daly, whose name is subscribed to the preceding certificate, is a judge, and the presiding

judge of the court of common pleas for the city and county of New York, duly elected and qualified, and that the signature of said judge to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 14th day of Nov., 1878.

[SEAL.] NATH'L JARVIS, Jr.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, greeting: Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, do find a certain annual report of La Abra Silver Mining Company there remaining, in the words and figures following, to wit:

Annual report for 1867.

Amount of capital stock	$300,000
Amount of capital stock actually paid in	157,000
Amount of existing debts of the company do not exceed	72,000

GEO. C. COLLINS, *Prest.*

GEO. C. COLLINS,
W. N. WORTHINGTON,
A. H. GIBBES,
Trustees.

Dated New York, Jan. 20, 1868.

CITY AND COUNTY OF NEW YORK, *ss:*

George C. Collins, being duly sworn, says that he is the president of La Abra Silver Mining Company above named, that the foregoing report and the several matters therein contained are and each of them is true.

GEO. C. COLLINS.

Sworn to before me January 21, 1868.

HENRY SNELL,
Notary Public, N. Y. City and County.

(Endorsed:) Filed Jan'y 21, 1868.

Supreme court, county of Kings.

JOHN H. GARTH, PLAINTIFF,
against
LA ABRA SILVER MINING COMPANY, DEFENDANTS.

Summons for a money demand on contract.

To the above-named defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office at No. 10 Pine street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiff in

this action will take judgment against you for the sum of fifty-three thousand four hundred and seven dollars and seventy-one cents, with interest from the eighth day of June, one thousand eight hundred and sixty-seven, besides the costs of this action.

BRITTON & ELY,
Plaintiff's Attorneys.

Dated June 8th, 1867.

Supreme court, county of Kings.

JOHN H. GARTH, PLAINTIFF,
against
LA ABRA SILVER MINING COMPANY, DEFENDANTS.

The plaintiff complains of the defendants and alleges —

First. For a first cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation created by and under the laws of this State, organized pursuant to an act of the legislature of said State entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes," passed February 17th, 1848, and the acts amending the same.

(2) That on the 15th day of May, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of the plaintiff five thousand one hundred and thirty dollars and seven cents on demand.

(3) That no part of said note has been paid.

Second. For a second cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

(2) That on the 15th day of May, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of Harrison, Garth & Co. seventeen thousand one hundred and eighty dollars and forty-seven cents on demand.

(3) That the said Harrison, Garth & Co. thereafter endorsed said note to the plaintiff.

(4) That no part thereof has been paid.

Third. For a third cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

(2) That on the 15th day of May, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of George C. Collins twenty-one thousand one hundred and forty-five dollars and seventeen cents on demand.

(3) That the said George C. Collins thereafter endorsed said note to the plaintiff.

(4) That no part thereof has been paid.

Fourth. For a fourth cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

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(2) That on the 8th day of June, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of the plaintiff nineteen hundred and ninety dollars and forty cents on demand.

(3) That no part of said note has been paid.

Fifth. For a fifth cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

(2) That on the 8th day of June, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of William L. Hearn nineteen hundred and ninety dollars and forty cents on demand.

(3) That the said Hearn thereafter endorsed said note to the plaintiff.

(4) That no part thereof has been paid.

Sixth. For a sixth cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

(2) That on the 8th day of June, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of D. J. Garth nineteen hundred and ninety dollars and forty cents on demand.

(3) That the said D. J. Garth thereafter endorsed said note to the plaintiff.

(4) That no part thereof has been paid.

Seventh. For a seventh cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, and as hereinbefore alleged.

(2) That on the 8th day of June, 1867, at the city of New York, the defendants made their promissory note, dated that day, and thereby promised to pay to the order of George C. Collins nineteen hundred and ninety dollars and forty cents on demand.

(3) That the said Collins thereafter endorsed said note to the plaintiff.

(4) That no part of said note has been paid.

Eighth. For an eighth cause of action—

(1) That the defendants are, and at the time next hereinafter mentioned were, a corporation, as hereinbefore alleged.

(2) That on the 8th day of June, 1867, at the city of New York, the defendants made their promissory note that day, and thereby promised to pay to the order of S. F. Nuckolls nineteen hundred and ninety dollars and forty cents on demand.

(3) That the said Nuckolls thereafter endorsed said note to the plaintiff.

(4) That no part thereof has been paid.

Wherefore the plaintiff demands judgment against the defendants for fifty-three thousand four hundred and seven dollars and seventy-one cents, with interest thereon from the eighth day of June, 1867, besides the costs of this action.

BRITTON & ELY,
Plaintiff's Attorneys,
10 *Pine St., New York.*

Dated June 8th, 1867.

CITY AND COUNTY OF NEW YORK, *ss:*

John H. Garth, the above-named plaintiff, being duly sworn, says that the foregoing complaint is true to his own knowledge, except as to those matters therein stated on information and belief, and as to these matters that he believes it to be true.

JNO. H. GARTH.

Sworn to before me June 8th, 1867.

MICHAEL PHILLIPS,
Comnr. of Deeds.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry Snell, of said city, being duly sworn, says that on the eleventh day of June, 1867, at No. 18 New street, in said city, he served the foregoing summons and complaint on La Abra Silver Mining Company by then and there delivering a copy thereof to and leaving the same with David J. Garth, the treasurer of said company, personally; and, further, that deponent knew the said David J. Garth at the time of such service to be the treasurer of said La Abra Silver Mining Company, described in said summons as the defendant therein.

HENRY SNELL.

Sworn to this 2nd day of July, 1867, before me,

MICHAEL PHILLIPS,
Comnr. of Deeds.

Supreme court, county of Kings.

JOHN H. GARTH, PLAINTIFF,
against
LA ABRA SILVER MINING COMPANY, defendants.
} Copy of judgment.

July 3, 1867.

The summons, with a copy of the complaint, in this action, having been duly served on La Abra Silver Mining Company, the defendants, on the eleventh day of June, 1867, and no copy of an answer or demurrer to the complaint having been served on the plaintiff's attorneys, as required by the summons, now, on motion of Britton & Ely, plaintiff's attorneys, it is hereby adjudged that John H. Garth, plaintiff, recover of La Abra Silver Mining Company, the defendants, the sum of fifty-three thousand six hundred and fifty-three dollars and fifty cents, the amount claimed and interest, with sixteen dollars and sixty-one cents costs and disbursements, amounting in the whole to fifty-three thousand six hundred and seventy dollars and eleven cents, and that the plaintiffs have execution therefor.

JOHN J. WHITE, *Clk.*

STATEMENT OF JUDGMENT AND COSTS.

Amount claimed in summons		$53,407.71
Interest		245.79
		53,653.50
Costs by statute	$15.00	
Clerk, entering judgment	.50	
Affidavits	.36	
Transcript and filing	.20	
Sheriff's fees	.69	16.61
		53,670.11

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CITY AND COUNTY OF NEW YORK, *ss:*

Sumner Stow Ely, one of the plaintiff's attorneys in the above action, being duly sworn, says that the disbursements above mentioned have been made in this action, or will be necessarily made or incurred therein, as he verily believes; and he further says that no copy of an answer or demurrer to the complaint in this action has been received.

SUMNER STOW ELY.

Sworn to before me this 2nd day of July, 1867.

HENRY SNELL,
Notary Public, N. Y. City and County.

All which we have caused by these presents to be exemplified and the seal of our said court for said county to be hereunto affixed.

Witness, Hon. Joseph F. Barnard, presiding justice of our supreme court in and for the second judicial department of said State, this fourteenth day of December, 1878, and in the one hundred and third year of the Independence of the United States.

JOHN DELMAR, *Clerk.*

I, Joseph F. Barnard, presiding justice of the supreme court of the State of New York in and for the second judicial department thereof, do hereby certify that John Delmar, whose name is subscribed to the preceding exemplification, is the clerk of the county of Kings and clerk of the supreme court in and for said county, and that full faith and credit are due to his official acts.

I further certify that the seal affixed to said exemplification is the proper seal of said court for said county, and that the attestation thereof is in due form of law and by the proper officer.

Witness my hand at the city of Brooklyn, this fourteenth day of December, in the year 1878.

J. F. BARNARD,
Presiding Justice of the Supreme Court of the State of New York in and for the Second Judicial Department.

STATE OF NEW YORK,
County of Kings, ss:

I, John Delmar, clerk of the county of Kings, and also clerk of the supreme court of said county in and for the second judicial department of said State (said court being a court of record), do hereby certify that Hon. Joseph F. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the second judicial department, duly elected and sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said county and court this fourteenth day of December, in the year 1878.

[SEAL.] JOHN DELMAR, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, United States commissioner for the southern district of New York, do hereby certify that on the 6th day of June, 1894,

at my office in the post-office building, in the city of New York, I was attended by Robert B. Lines, special assistant to the Attorney-General, on behalf of the United States, and Crammond Kennedy, esq., on behalf of the defendants, and thereupon the foregoing documentary evidence was taken before me.

I further certify that said evidence was taken before me by consent of counsel for the respective parties, and that Exhibits 1, 2, 3, and 4, introduced in the taking of the said evidence, are returned herewith.

And I do further certify that I am not of counsel nor attorney for either of the parties in the above-entitled cause, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

[SEAL.] JOHN A. SHIELDS,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York in the Second Circuit.

Deposition of William P. Tuttle, for complainant, taken at Washington, D. C., on the 8th day of June, A. D. 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney General; respondents' counsel, Crammond Kennedy, esq.

WILLIAM P. TUTTLE, being first duly sworn, testified as follows:

By Mr. LINES:

Question. Please state your name, age, residence and occupation.

Answer. William P. Tuttle; 51; Madison, N. J.; I am now an accountant and auditor; was a banker and broker at that time, but not now.

Question. At what time?

Answer. When I gave my former testimony. I gave my occupation then as banker and broker; that was correct. Now I am an accountant and auditor.

Question. The testimony where?

Answer. When I was before the Senate committee. You will find it there.

Question. How long were you engaged in business in New York City?

Answer. I testified before that I had been there fifteen years. I have been there now twenty-one years—of course, six years more.

Question. During that time were you acquainted with Charles H. Exall?

Answer. I was.

Question. What were the circumstances of your acquaintance with Mr. Exall?

Answer. I was in business with Mr. John Ewen, jr., in the firm of Ewen & Tuttle, bankers and brokers, and Mr. Exall was employed as our bookkeeper and cashier.

Question. About what time was he in your employ?

Answer. He came to our employ May 6, 1876, and remained during 1877 and part of 1878.

Question. Where is Mr. Exall?

Answer. He is dead.

Question. Do you know when he died?

Answer. I can not tell you exactly, but it is my strong impression that it was in the year 1879, after he had left us.

Question. Are you familiar with his handwriting?

Answer. I am.

Question. How did you become familiar with his handwriting?

Answer. He kept our books in his own handwriting, and I became familiar with it in that way.

Question. Please look at this letter, dated Tayaltita, February 26, 1868, addressed to Mr. James Granger, and state if you know in whose handwriting it is, and by whom it is signed.

Answer. It is signed by Charles H. Exall. I would judge that that is his signature, according to my best recollection, and that it is in his handwriting.

Mr. LINES. The letter referred to is now offered in evidence, and marked "Exhibit 5, William P. Tuttle, A. H."

(Mr. Kennedy, counsel for defendants, reserves objections, so as to make them to all the letters and letterpress copy book at the same time.)

Question. Mr. Tuttle, please examine these letters which I now hand you, dated, respectively, Mazatlan, May 15, 1868; San Francisco, April 7, 1868; New York, May 8, 1868; New York, June 15, 1868, and Richmond, July 18, 1868, and signed "Charles H. Exall," and state in whose handwriting they are, and by whom signed.

Answer. They are in his (Mr. Exall's) handwriting, and signed by him.

Question. In the handwriting of Charles H. Exall, who was your bookkeeper?

Answer. Yes, sir.

Mr. LINES. The letters referred to are now offered in evidence on behalf of the complainant, and marked as follows: Letter of March 15, 1868, "Exhibit 6, William P. Tuttle, A. H.;" letter of April 7, 1868, "Exhibit 7, William P. Tuttle, A. H.;" letter of May 8, 1868, "Exhibit 8, William P. Tuttle, A. H.;" letter of June 15, 1868, "Exhibit 9, William P. Tuttle, A. H.;" and letter of July 18, 1868, "Exhibit 10, William P. Tuttle, A. H."

Question. Did you, when you employed Mr. Exall, know whether he had been in Mexico; and if so, in what capacity?

Answer. I have a very indistinct recollection of hearing the word "Mexico" used in connection with him about the time he came to us, but I had no idea of the business or capacity in which he was there.

Question. Mr. Tuttle, please look at this letterpress copy book, which I now hand you, and compare the press copy of a letter appearing on page 188 of the book with the letter you have just identified as that of Charles Exall, dated Tayaltita, February 26, 1868, and state whether the press copy is a press copy of the original letter.

Mr. KENNEDY. I object to that, on the ground that if the letterpress copy book as well as the original letter is going to be offered in evidence, the comparison can then be made by the court.

Answer. Yes, sir; it is a press copy.

Question (by Mr. LINES). Please look at page 144 of this press copy book, and state in whose handwriting the letter is, a press copy of which is found on that page, and is signed "J. A. De Lagnel, pr. C. H. Exall."

Answer. I think there is no doubt that it is the handwriting of Exall. That signature is his, and while it is not quite so easy to identify it in another language, it has undoubtedly the same characteristics.

Question. Now, I will ask you to examine the press copies of letters appearing from pages of the book 155 to 187, inclusive, and state, if you know, in whose handwriting they are.

Answer. Pages 155 and 156, dated May 6, 1867, undoubtedly is Mr. Exall's; May 17, 1867, not paged, is also his; the one not paged, dated June 13, 1867, this is undoubtedly Mr. Exall's, to W. C. Ralston, esq.; the one not paged, dated June 11, 1867, to D. J. Garth, is undoubtedly in his handwriting; and the one on page 157, in Spanish, dated July 11, 1867, addressed "Al. Sr. Jefe Politico de San Dimas," is signed and written by Mr. Exall undoubtedly. The statement of cash receipts on page 158, my impression is very strong that those figures are Mr. Exall's. There is no signature, simply a statement of figures; a continuation of the same statement on page 159 seems to me to be in his handwriting; a continuation of the same on page 160 I think is in his handwriting; the continuation on page 161 looks to me like it. On pages 162, 163, and 164, there is no signature on any of those statements, but I think they are all in the same handwriting. On page 165 the letter to D. J. Garth, esq., continued on 166 and 167, and 170 and 171, is also in his handwriting, and signed by him. The one on pages 168 and 169, to J. G. Rice, esq., is signed by Charles H. Exall undoubtedly. The part of the letter on page 170 and 171 is a continuation of the letter to Garth, and is also in his handwriting. The one, not paged, to D. J. Garth, dated August 5, 1867, two pages, not paged, is in Charles H. Exall's handwriting, and signed by him. The statement, not paged, entitled " * * * from 27th May to 13th July inclusive" (part is blurred) is signed on the next page (not paged) Charles H. Exall. The signature is correct and the letter seems to be all in his handwriting. On page 172, the letter to "Sr. D. Macario Olvera," dated September 9, 1867, is signed and written by Charles H. Exall; the one dated at Mazatlan, October 6, 1867, to D. J. Garth, three pages not paged, is signed and written by Charles H. Exall; page 173 is fastened (pasted) to an unpaged one, on which the signature of that letter occurs. On page 174, the letter in Spanish to "Sr. D. Antonio Armiento," dated Tayaltita, October 14, 1867, is written and signed by Charles H. Exall; the one on page 175, to "Sr. D. Antonio Armiento," dated Tayaltita, October 14, 1867, is written and signed by Charles H. Exall. Now come some letters from Granger, which are in a different handwriting.

Mr. LINES. Just state where this letter of Mr. Granger is.

The WITNESS. On page 176 is a letter to D. J. Garth, written by James Granger, dated 8th November 1867.

Question (by Mr. LINES). Do you recognize that handwriting, Mr. Tuttle?

Answer. No, sir; I am not acquainted with Granger's handwriting.

The WITNESS (continuing). There is one on two pages, not paged, dated at Mazatlan, November 17, 1867, to D. J. Garth, esq., signed and written by Charles H. Exall. There is a letter on two pages fastened together, not paged, to D. J. Garth, esq , signed and written by Charles H. Exall; these two pages are back to back. There is a page, 177, entirely blank. The one on page 178 in Spanish, to "C. Gefe Politico del Partido," dated November 26, 1867, is written and signed by Charles H. Exall. The one on pages 179 and 180 to "Sr. D. Macario Olvera," dated December 5, 1867, is signed and written by Charles H. Exall; and another one on page 180 to "S. D. Ramon Gurrola," dated December 10, 1867, in Spanish, is written and signed by Charles H. Exall. The one on pages 181 and 182 to "S. Don Juan Castillo de Valle," dated December 5, 1867, is signed and written by Charles H. Exall. The one on page 182, written to "Sr. Dn. Miguel Laveaga," in Spanish, dated "Enero 12 de 1868," is written and signed by Charles H. Exall. Then there is a receipt dated at San Dimas, Durango, December 25, 1867, signed and written by Charles H. Exall. Then a letter on pages 184, 185, 186, and 187, dated Tayaltita, January 7, 1868, to "C. Jefe Politico," is signed and written by Charles H. Exall. The one on two pages, not numbered, back to back, and fastened together, dated Mazatlan, January 24, 1868, to D. J. Garth, is written and signed by Charles H. Exall.

Mr. LINES. Look at the letter on page 189, and state where it is dated, by whom it appears to be signed, and whether you recognize the signature of that letter.

The WITNESS. The letter on page 189 I don't think that that is in his handwriting; it is not signed by him.

Mr. LINES. Just give the date and the signature.

The WITNESS. "Tayaltita 12 de Agosto de 1868," signed Santiago Granger.

Mr. LINES. That is not Mr. Exall's handwriting?

The WITNESS. No, sir.

Mr. LINES. The said press copy book is now offered in evidence on behalf of the complainant, so far as the letters therein appearing have been identified by the witness, and marked Exhibit 11, William P. Tuttle, A. H.

Mr. KENNEDY. Counsel for the defendant objects to the introduction of the letterpress copy book and the alleged original letters of Exall to Granger on the following grounds: First, that their discovery and possession by the Mexican Government have not been properly accounted for; secondly, that it has not been shown that the said copy book and letters could not have been produced by the Mexican Government while the claim of the company was pending before the mixed commission under the treaty; thirdly, that they contain statements outside of the scope of Exall's agency for the company; fourthly, that Exall had projects of his own hostile to the interests of the company, and could not, and did not, bind the company by his statements in respect to those matters in which his own objects and interests and those of the company conflicted; fifthly, that some of the letters were written after he had left the employment of the company to a person not employed by them, and were res inter alios acta; sixthly, that neither as declarations of a party, nor for the purpose of contradicting Exall as a witness for the company before the mixed commission, are the said original letters or copy book admissible.

It is admitted by counsel for the defendant, the La Abra Silver Mining Company, that from May 6, 1867, to February 26, 1868, inclusive, Charles H. Exall was acting as superintendent of the mining property of said defendant company at Tayaltita, Mexico.

It is stipulated by counsel for the defendant, the La Abra Silver Mining Company, that nothing in the foregoing objections is to prevent the complainant from offering hereafter any testimony as to the time and manner of the obtaining possession of the said book and letters; that is to say, that the objection is not to be applied to the order in which the complainant may offer any of his testimony in this cause.

Cross-examination by Mr. KENNEDY:

Question. Mr. Tuttle, about how old a man was Mr. Exall when he was in your employment?

Answer. Well, sir, I do not know that I could tell you very confidently, but I should think he was a man of about 35, I should guess.

Question. What was the condition of his health while he was your bookkeeper?

Answer. He was in very good health until near the close of his employment by us, when he broke down, and left us principally on that account.

Question. Did you or your partner keep track of him after he left your employment?

Answer. Merely to know where he lived in the city and to sympathize with him in his ill health. We heard from him once in awhile.

Question. What were his circumstances after he left your employment?

Answer. Well, I thought that he was in reduced circumstances; that is what I heard at the time.

Question. And when was it that you said in your direct testimony that he left your employment?

Answer. I think I said early in 1879; that is my recollection.

Question. Your first impression was, if I recollect correctly, that he died in 1879?

Answer. Oh, I beg your pardon; I was thinking of his death when I answered your question. He left us in 1878, and my impression of his death was that it occurred early in 1879.

Question. Why did you think that he was in reduced circumstances?

Answer. Because I recollect a friend of his and a friend of my partners Ewen, coming into the office and saying he had been up to see Exall, and "the poor fellow is badly off," something like that—some expression like that—and Ewen then said he must go up and see him.

Question. That was after Exall had left your employment?

Answer. Yes, sir.

Question. How shortly before his death?

Answer. Well, I think, perhaps a month or two, perhaps three.

The WITNESS. In my testimony before the Senate committee I objected to those statements, saying that I did not think they were in his (Exall's) handwriting, but in looking at them now it doesn't strike me so. It is perhaps because I had been looking at his figures more with a view to coming here. I had looked at his work considerably, and had seen more of his figures than I had before. I had seen his writing before, and not so many of his figures. I think the figures are his.

Mr. LINES. On what pages are the statements to which you refer?

Answer. 158 to 164.

Mr. LINES. As to the handwriting in the statements referred to, have you any suggestion to make?

Answer. I don't think it looks unlike his. It is much the same. It was the figures which struck me before, I suppose, and I didn't think they resembled his so much, according to my recollection. But now that I see them it doesn't strike me so. I merely want to account for that seeming discrepancy between my testimony in regard to those statements of figures before the Senate committee and my statements now; that is all.

Mr. KENNEDY. Do I understand you to say that before you were examined by the Senate committee you looked at Exall's figures as found in the books that he kept for your old firm?

Answer. Yes, sir; I looked at his writing then hastily; I didn't pay much attention to his figures. In coming down before I remember distinctly that I had a signature of his in my pocket which I took off of a document that I had. When I came to look at those figures I could not identify them very well.

Question. When you examined the other books didn't you find more figures there in Exall's hand than writing?

Answer. Yes, that is the way I came to look at the figures with a keener eye now than I did before, because I was looking at the figures in my books only yesterday.

Question. But did I not understand you to say that you looked at the figures in the old books of your firm before you were examined by the Senate committee?

Answer. I looked at his handwriting, but I didn't see the figures so much. I will tell you how it was. I had a document of his with writing but no figures, and I didn't go to the books but I simply took that document, and when I was summoned here I pulled over the books, and in doing that I saw a good many of the figures besides the handwriting.

Question. Now, my question is, whether you did or did not look at the books before you were examined by the Senate committee?

Answer. I did look at the books, but not as critically as I did this time, because I had that document, which I did look at very critically, and it satisfied me in a way.

Question. But could you look at the books without seeing the figures as well as the writing?

Answer. No, I could not.

Question. Just answer my questions categorically. Now, please state exactly what it was in those statements in the letterpress copy book which made you say, when you were examined by the Senate committee, that you did not think the statements were in the handwriting of Exall?

Answer. Well, it was the appearance of the figures. They didn't look quite as I thought they would look.

Question. At that time had you any doubt that the handwriting in the statements was Exall's?

Answer. Well, I suppose that I looked at the whole thing together—the figures predominated in the statements, you see. Perhaps I was not careful enough in looking at the handwriting. Since I have been sitting here I have been looking at the handwriting, and I don't see a sufficient ground for objecting to their being Mr. Exall's.

Question. My question was whether, when you examined the statements and letterpress copy book at the time that you were testifying before the Senate committee, you had any doubt in regard to the handwriting as distinguished from the figures in those statements?

Answer. I do not recollect now that the handwriting produced any impression upon my mind. It was the general appearance of the statement.

Question. Did you think the handwriting was or was not Exall's?

Answer. I remember that I thought that the statement was not Exall's at that time. But I can not recollect now that the handwriting made a distinct impression upon my mind.

Question. Suppose you had thought that the figures were Exall's, but that the handwriting was not Exall's, or vice versa, would you not have said so to the Senate committee?

Answer. Yes, sir; I think I would.

Question. Do you know, of your own knowledge, whether any of those letters that have been copied in the letterpress book were ever mailed to the persons or sent to the persons to whom they were addressed?

Answer. I don't know, sir; I know nothing about that.

Question. Nor whether any of those persons ever received any of those letters?

Answer. No, sir.

Question. You noticed that a number of the letters are not paged, and that they are pasted into the book?

Answer. I did.

Question. Have you any idea as to how that was done, or by whom?

Answer. No, sir.

Question. You have no personal knowledge whatever as to the book itself?

Answer. No, sir. I never have seen it except as I examined it before the Senate committee in September, 1888, and have examined it in your presence to-day.

Redirect examination by Mr. LINES:

Question. Mr. Tuttle, are you familiar, in a general way, with handwriting—accustomed to make comparisons?

Answer. I am not an expert at it, but I have been accustomed to judge of it in a business way all my business life.

Question. As the identity of the handwriting in these statements in the press copy book has been gone into on cross-examination, I will ask you to reexamine the handwriting in those statements and compare it with the letter on page 189 of the book, signed "Santiago Granger," and other letters, which you have examined, purporting to have been signed by Granger, and to state if you find any resemblance between the handwriting of the statements and that of the letters signed by Granger.

Mr. KENNEDY. Objection is made to that question, because the witness has testified that he is not an expert, and it has already appeared from his testimony that he has been testifying from his personal knowledge of Exall's handwriting, and it would be clearly improper to allow the witness to testify from any comparison that he might make between the statements as to which he has testified and the letter of Granger, to which counsel for the Government has drawn the witness's attention.

Answer. I see one or two very striking resemblances between Granger's handwriting and the writing found on page 160, for instance.

Question. Now, Mr. Tuttle, do you really think the handwriting of the statements is the handwriting of Exall?

Mr. KENNEDY. Same objection to that.

Answer. Those peculiarities certainly change my opinion in regard to it. I presume that those were the very points which I saw distinctly when I stated before the Senate committee my conviction, and it was only in looking at the figures and losing sight of those peculiarities which made me say what I did to-day.

Question. (By Mr. LINES.) As to the letters concerning which you have testified that they are undoubtedly in the handwriting of Charles H. Exall, have you now any doubt?

Answer. None whatever.

Re-cross examination by Mr. KENNEDY:

Question. Do not the figures in the statements still seem to you to be Exall's?

Answer. They seem similar to Exall's figures.

Question. How came it that after your attention had been drawn to the testimony that you gave before the Senate committee, and you gave testimony at this examination which qualifies the testimony that you gave then, you now reiterate the testimony that you gave before the Senate committee?

Answer. Well, sir, it is because I have been refreshed, so as to recollect some comparisons which I had made at that time and which made me give the testimony which I did.

Question. If your attention hadn't been called in this examination to the letter in the press copy book that is signed Santiago Granger, would you have qualified your testimony in regard to those statements?

Answer. I think not. I think I should have left it as I stated it at this examination.

WM. P. TUTTLE.

Deposition of Julius Adolphus De Lagnel, for complainant, taken at Washington, D. C., on the 9th day of June, A. D. 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney-General; respondents' counsel, Crammond Kennedy, esq.

JULIUS ADOLPHUS DE LAGNEL, being first duly sworn, testified as follows:

By Mr. LINES:

Question. State your age, residence, and occupation.

Answer. I am now nearly 67; live in Alexandria, Va., and have no present occupation.

Question. What has been, briefly, your occupation in the past?

Answer. From early in 1847 till the spring of 1861 I was in the United States Army; from the summer of 1861 till the spring of 1865, in the Confederate service. The next employment was from early in 1866 to the spring of 1867, when I was employed by the La Abra Silver Mining

Company. From 1868 to 1869 I was in the employment of Marshall O. Roberts, of New York, and from the fall of 1870 till June, 1880, in the employ of the Pacific Mail Steamship Company. Since then I have been living at home.

Question. What rank did you attain in the United States Army, and what in the Confederate Army?

Answer. I had reached the head of the first lieutenants in the Second Artillery, and would have been promoted if it hadn't been for my resignation, and was a lieutenant-colonel in the Confederate service.

Question. What was your employment with the La Abra Silver Mining Company, the defendant?

Answer. I was engaged and sent out to act as the superintendent to relieve General Bartholow, who was said to be ailing and wanting to return.

Question. By whom were you engaged as superintendent for the La Abra Silver Mining Company?

Answer. I was first introduced to Mr. David J. Garth by a mutual friend, and by him presented to Mr. Hearn, who was at that time president of the company.

Question. And where were your services performed?

Answer. At Tayoltita, near the border of the State of Durango, in Mexico.

Question. Was that where the mines and property of the company were?

Answer. Yes, sir; they were situated there.

Question. Do you remember who introduced you to Mr. Garth?

Answer. Yes, sir; Col. James R. Branch, of Richmond.

Question. With what officer of the company did you correspond, and to whom did you report as superintendent?

Answer. All letters written by me with reference to the business of the company were written and addressed to David J. Garth, secretary or treasurer, or both, possibly, I don't know exactly.

Question. Was he the executive officer of the company in New York?

Answer. He was the only one that I had any communication with, except Mr. Hearn; I knew none others as officers.

Question. From whom did you receive instructions?

Answer. Mr. Garth verbally, from time to time, talked about matters, and Mr. Hearn gave me a letter of instructions when I went out, but I couldn't tell you what was in them to save my life. I think he gave me a letter of instructions.

Question. But after you reached the mines?

Answer. Everything came from Mr. Garth, and none other. I never corresponded with any one else in regard to the matters.

Question. Are you familiar with Mr. Garth's handwriting?

Answer. I could recognize, I think, anything that I have seen of Mr. Garth's, but I don't know that I would recognize anything—any writing—made by Mr. Garth now.

Question. Please examine the letters which I now hand you, dated New York, May 10, 1867; New York, May 20, 1867; New York, May 30, 1867; New York, June 10, 1867; New York, July 10, 1867; New York, July 20, 1867; New York, August 10, 1867, and New York,

October 10, 1867, addressed to Mr. Charles H. Exall, Tayoltita, Mexico, and signed D. J. Garth, and state, if you know, in whose handwriting they are and by whom signed.

Mr. KENNEDY. Note objection, please, that the witness has just testified that he could identify only such letters of Mr. Garth's as he had seen before, and that it appears from the offer that these letters were not addressed to witness, but were written to another person after the witness had left the company's employment.

Answer. These letters I recognize to be in the handwriting of D. J. Garth, and signed by him.

Question (by Mr. LINES). Have you ever seen these letters before?

Answer. Twice before; first in San Francisco, before the commissioner who took my deposition—the first testimony in regard to this letter book—on December 2, 1878, and also when before the Senate committee who examined me four or five years ago.

Question. Does this deposition to which these letters are attached—is that the deposition you refer to?

Answer. I refer to this deposition now attached to the letter book, as it was that deposition to which Garth's letters were attached.

Question. Is that the deposition you refer to as having been taken in San Francisco?

Answer. Yes, sir; this deposition, having my signature and now attached to the letters.

Question. Please examine this deposition, and state whether it appears to be fastened under the seal of the commissioner so that it could not be removed without breaking the seal?

(Witness examines letter book and papers).

Answer. The deposition I refer to is the one signed by me and bearing the seal of the clerk of the court, district of California.

Question. How is it attached?

Answer. Attached with ribands covered by the seal and undoubtedly the same.

Question. Both this deposition and the letters of Mr. Garth appear to be attached by the same riband to a press copy book. Please examine that book, and state, if you know, what it is.

(Witness examines book.)

Answer. This book is the letter book formerly used at the hacienda, Tayoltita, having relation to the business matters of the La Abra Silver Mining Company.

Question. Is that the book in which, while you were superintendent, the official letters——

Answer. Being the book in which all my official letters with the La Abra Company, or its officers, were copied.

Question. Please examine the press copies of letters appearing in this book from pages 69 to 153, and state whether the copies bearing your signature are copies of letters signed by you while you were superintendent of the La Abra Company's mines and property.

(Witness examines copies on pages indicated in question.)

Answer. All those bearing my signature are mine, sir.

Question. Have you ever seen that book since you left the employment of the company?

Answer. The first time I saw this book after leaving the service of the company was in San Francisco, when I was called upon to identify the letter book before the United States Commissioner. The next time was when I was examined by the Senate committee in relation to this claim.

Question. As your deposition taken in San Francisco is not evidence in this case, I will ask you to detach it from the letters and from the press copy book.

(Witness detaches the letters and the press copy book identified by him from the deposition referred to.)

Mr. LINES. The press copy book referred to is the one introduced yesterday in the testimony of William P. Tuttle, and marked by the commissioner "Exhibit 11, Wm. P. Tuttle, A. H." The letters from Garth to Exall, identified by the witness, are now offered in evidence on behalf of the complainant and marked as follows: Letter of May 10, 1867, "Exhibit 12, J. A. L., A. H.;" letter of May 20, 1867, "Exhibit 13, J. A. L., A. H.;" letter of May 30, 1867, "Exhibit 14, J. A. L., A. H.;" letter of June 10, 1867, "Exhibit 15, J. A. L., A. H.;" letter of July 10, 1867, "Exhibit 16, J. A. L., A. H.;" letter of July 20, 1867, "Exhibit 17, J. A. L., A. H.;" letter of August 10, 1867, "Exhibit 18, J. A. L., A. H.;" and letter of October 10, 1867, "Exhibit 19, J. A. L., A. H."

Mr. KENNEDY. Counsel for the La Abra Company, defendant, objects to the complainant's offer on the ground that the identity of the handwriting of D. J. Garth has not been proved.

Question (by Mr. LINES). When you stated that you might not be able to recognize any handwriting made by Mr. Garth "now," what did you mean?

Answer. I meant that many years having passed, during that period the infirmity of age might have changed the character of his writing; that anything made that number of years ago—when these letters were written—I think I would recognize.

Question. I notice that there appear among the copies of letters which you have just identified in the press copy book several copies which seem to have been written from Mazatlan, or other places distant from Tayoltita, and which were pasted into the book between its numbered pages. What explanation, if any, can you give of that circumstance?

Answer. As I had to ride to the port of Mazatlan, and possibly other places—I am not sure—and transact business, and write from those points to the home office in New York, and desired to keep copies, I had to make them on spare leaves, not numbered, and inserted them in the letter book myself when I returned to the hacienda.

Question. It was not your practice, then, to carry the letter book of the company with you?

Answer. No; it never left the house.

Question. Now, Colonel—pardon the question as a matter of form—were the statements made in these letters, copies of which you have identified in the press copy book as bearing your signature, true, or did you believe them to be true at the time you made them?

Answer. At the time I wrote these several letters I believed every word contained in them was as true as God's truth. I never made any representation to anyone that I believed false.

Question. Was there anybody else during the time you were superintendent of the company authorized to write official letters from the mines as such superintendent than yourself?

Answer. There was no general authorization to anybody. I observe in the book two letters bearing the signature of Charles E. Norton, a clerk; they must have been written with my approbation or they would not appear there. But those were in special cases and for some cause which I can not now explain. I can not tell whether it was sickness or what.

Question. You speak of sickness. Were you ill during your superintendency for any length of time?

Answer. I don't recollect having been ill, except I had chills and fever, but they would come and go. I never was confined to my room for any time, but day after day the fever would come and pass away, leaving me in that inert condition you know so well.

Question. Were you ever unable, by reason of sickness, to supervise the business of the company for any length of time?

Answer. Never for any length of time; a day or so, but always kept about.

Question. Please look at the letter in Spanish on page 144 of the press copy book, and state by whom it is signed?

(Witness examines copy indicated.)

Answer. That must have been signed by Exall, as I see his name there "per C. H. Exall."

Question. How is it signed?

Answer. It is signed "J. A. DeLagnel, per C. H. Exall."

Question. Who was Mr. Exall?

Answer. Mr. Exall was a gentlemen sent out with letters from New York, from the headquarters of the company, and recommended as an assistant to do whatever fell to his lot. He was sent out as an assistant to do anything I should assign him to.

Question. As an assistant to you?

Answer. Yes, sir.

Question. Do you remember when he came out?

Answer. I should think he came early in the fall of 1866—I think so, I am not sure.

Question. How long did he remain, so far as you know?

Answer. He was there when I left, sir; but I don't know how much longer. I left him in charge.

Question. You left him in charge?

Answer. Yes, sir; in full charge.

Question. Did you have authority from the company to do so?

Answer. I had no specific orders, but I had written and they knew that my contract was but for one year. They knew that the year would expire on a certain day. I had long before told them that I would not remain, though solicited to do so. This gentleman had been sent out; he was the only representative besides myself there.

Question. You spoke of a letter of general instructions from the president of the company, did you, or did you not, consider that under your instructions you had a right to put Mr. Exall in charge?

Mr. KENNEDY. I object to that on the ground that the instructions were in writing and would be their own best evidence.

Question (by Mr. LINES). What has become of the letter of general instructions?

Answer. I could not tell, sir; it is so many years ago. I suppose I threw it away. I never dreamed that there would be any further reference to it.

Question. You don't know where it is?

Answer. No, sir; I don't suppose it is in existence.

Question. Did you, or did you not, consider that under your instructions you had authority to put Mr. Exall in charge?

Mr. KENNEDY. I object to that on the ground that it does not call for the contents of the instructions, but for the witness's understanding of them.

Question (by Mr. LINES). Can you remember what were the contents of that letter of instructions?

Answer. I could surmise, but I could not say that I recollect them. But I could very nearly.

Question. Did you think at the time they authorized you to put Mr. Exall in charge when you left?

Mr. KENNEDY. I object to that on the ground that it calls for a conclusion of the witness from instructions which he has just testified he can not recollect.

Question (by Mr. LINES). Do you recollect in those instructions any general authority giving you the right to put Mr. Exall in charge after you left?

Mr. KENNEDY. I object to that that it is leading the witness.

Answer. I had no positive instructions to do so that I know of. I did it from the force of circumstances, there being no one else there, he being there by authority, and the company knowing that I was going and having ample time to provide a substitute.

Question. About when did you return from Tayoltita to New York?

Answer. I left Tayoltita, I think, early in April, and arrived in New York some time in May, 1867.

Question. Did you see the officers of the company when you reached New York?

Answer. I saw Mr. Garth the afternoon I arrived; within half an hour after arriving I saw him. I did not see Mr. Hearn for a day or so.

Question. Did you make any report in writing of your superintendency and the condition of the property when you left it?

Answer. I handed to him papers covering the moneys and properties and the transactions in them, and I made a verbal statement to him of the condition of affairs; that is, as to the condition in which I left the place, its capabilities and so on.

Question. You made no written report of the condition?

Answer. I don't think there was, sir. I think whatever I had to say to him I said that afternoon.

Question. Please state, as nearly as you can, what you reported to Mr. Garth or to Mr. Hearn as to the condition of the property when you left it.

Answer. I can not recollect what I said, but it was informing him of the state of advancement in which the works were, the difficulties I had had in arriving even so far, and the reasons why I had called upon them repeatedly for money.

Question. What answer had they made to your repeated calls for money?

Answer. They had always answered them, but had asked me (Garth did, at least) not to draw any more, but had always met the drafts when presented.

Question. I ask your attention to the letter of April 10, 1867, which appears to be the last in the press copy book written by you and which is not paged, but is dated at Mazatlan and addressed to William C. Ralston, cashier of the Bank of California, inclosing to him duplicate drafts for $5,000 upon D. J. Garth, and stating that you had drawn on the bank for the same amount in favor of a firm in Mazatlan. Do you know what became of that draft when it was presented to Mr. Garth?

Answer. Mr. Garth told me it hadn't been paid; that is all I know of it, sir.

Question. What did you report to Mr. Garth as to the condition and the prospects at the mines?

Answer. I don't think that I could have said much in regard to that, sir, because I didn't feel that I could give an intelligent opinion to Mr. Garth as to the capabilities of the mines.

Question. What was the condition in a general way?

Answer. The yield had been gradually diminishing; I mean the value of the yield. The same amount of rock was taken out, but not the same amount of silver ore.

Question. How did you ascertain the value of the yield during your superintendency?

Answer. What I said as to the value was simply a question of bulk, not of dollars and cents.

Question. How did you ascertain the value of the ore taken out during your superintendency?

Answer. The only guide I had was the opinion of the yield from those supposed to know—who professed to know—native miners and others, and in two instances from assay, one at the works and one elsewhere.

Question. By whom were these assays made?

Answer. The first was made at a place some miles distant by the superintendent and myself.

Question. What place?

Answer. At a place called La Puerta.

Question. Who was the superintendent of those works?

Answer. His name was Elder.

Question. Do you know his initials?

Answer. No, sir; I could not say what his initials are.

Question. How was the second assay made?

Answer. The second assay was made at our own place after the first trial of the mill. I assisted Elder in making the assay; we were working in common in the little room. I suppose he did the greater part of it.

Question. What experience had you, Colonel, as an assayer of ores?

Answer. No experience properly so called. With a view of taking this place I was instructed by a gentleman in New York who stood high as a metallurgist and chemist and instructor of several branches, and went out prepared and competent to make a dry assay.

Question. How long were you under instructions?

Answer. Well, I was from the first of the year till I went out, during the month of January—possibly two months, I am not sure; till the time I left, anyway.

Question. What year?

Answer. 1866.

Question. Do you know what experience Mr. Elder had had.

Answer. He had had a good deal, sir; he had been a long time there with the company. He was not a member of the company. Afterwards the whole thing seemed to pass into his hands. He was working, mining, beneficiating, and assaying his own ores. He was the best one that I could reach.

Question. And from these assays I understand you to say it appeared that the value of the ores was diminishing up to the time you left the property?

Answer. The first of those assays was made very soon after I went there—soon after General Bartholow left—and that assay was very satisfactory, so as to give us high hopes. The final assay was after we had commenced working the mill. There were two different ores. The first assay was all from La Luz mine, and that gave very satisfactory results, but I am not able to tell you what they were. That letter book probably would tell you, for I must have written to Mr. Garth about it. Then another interval ensued, and I made no assay until we got the mill to working and in use. We got the average; we didn't get the result of one little valuable piece, but we got the general average of the run—10 tons, 20 tons—and that assay, while it was satisfactory, still it was nothing comparable with the other.

Question. Was the assay made from the same ores as the other?

Answer. No, sir; it was two different ores.

Question. From what mine was the one you last spoke of?

Answer. The first was from La Luz and the last from El Christo.

Question. You speak of the mill; what sort of a mill was it?

Answer. It was a ten-stamp mill, with four pans, I think, and condensers and settlers. It was an American iron mill.

Question. When did it get in operation?

Answer. Not until just before I went away. I waited for it a few days. I should have started possibly earlier, but I waited a few days for the run to be made to see what it would do. It was in the early part of April some time, I should think.

Question. You say it was an American mill. Do you know where it came from and when it reached the mines?

Answer. It was ordered in San Francisco and sent down before my arrival there, and was on the ground in detached pieces, as it had been packed up on the mule backs, when I arrived. That was the condition in which I found it.

Question. Was your work, then, largely in putting the mill in order and operation?

Answer. The mill had to be put together. The difficulty of transportation rendered it impossible to take a pan of 6 or 7 feet in diameter up narrow defiles, and therefore these immense pans had to be cut in quadrants. They were put together, riveted, and then rusted with acid and iron filings, so as to make it seem one uniform piece. I had to have that done at the works.

Question. Who was your predecessor as superintendent of the mines?

Answer. General Bartholow.

Question. How long had he been there when you arrived?

Answer. That I can not exactly say—somewhere in the vicinity of a year; but I am not sure; I think nearly a year.

Question. How long had the mill been there in detached portions when you arrived?

Answer. That is impossible for me now to say, sir.

Question. Where did you erect the mill?

Answer. Right upon the site of the old mill, within the limits of the hacienda grounds; the wheel occupied nearly the same position as the old wheel.

Question. What became of the old mill?

Answer. It was torn down and broken up; the wheel had disappeared; I don't know what had become of it. The arastras were all torn out.

Question. Do you know whether any of the ores of the company were reduced before the old mill was torn down and the new mill erected on the site—from these mines in question, I mean, of the company?

Answer. No, sir; never. At least, I am not sure of it, because I wasn't there. I don't know what they did with the old machinery, but I never heard of it.

Question. Was there anything except the fact that the old mill was torn down to give place to the new one to prevent a reduction of the ores?

Answer. There was no means of reducing them at that place; there was no battery to break the rock; there was no arastras in which to grind it down into a condition to spread onto the patio.

Question. Do you mean before the old mill was destroyed?

Answer. I suppose so, because they hadn't been working there. It was so reported to me.

Question. Was there any reason why the company might not have ascertained the value of its ores by reducing them at the old mill before its destruction?

Mr. KENNEDY. I object to that on the ground that it assumes that the company had not taken steps to ascertain the value of the ores, whereas the witness has testified that he and Mr. Elder had made a satisfactory assay.

Answer. That I can't say, sir; if I tell you, it is only hearsay.

Question (by Mr LINES). Do you know of any reason why the ores might not have been reduced at the old mill?

Mr. KENNEDY. I make the same objection to that.

Answer. They could have been reduced hadn't the old mill been destroyed. I mean to say this: They had the new mill on the ground ready to put up and tore the old one down and put this in.

Question (by Mr. LINES). Do I understand that it was nearly a year after you arrived before the mill was in operation?

Answer. Exactly; just about a year.

Question. And you don't know how long the new mill had been there before your arrival?

Answer. It was on the ground; it had been there some time in detached pieces.

Question. How much of the rock or ore did you find when you went there which had been taken out of the mines by the company before your arrival?

Answer. I could not tell you; there were several piles—ore piles, they called them. There was a little inconsiderable amount that was said to be valuable.

Question. Did you continue taking this ore or rock out of the mines while you were erecting the mill?

Answer. Yes, sir.

Question. How much do you think there was extracted, ready for reduction, when you left?

Answer. I could not tell you, sir; that is a matter I could not begin to tell.

Question. What was the result of the reduction made by you?

Answer. That was not as satisfactory as the first one.

Question. No; I am not speaking of the assays, but of the reduction—the net result of the reduction of the ore; I mean the proceeds—what came out of the ore reduced by you?

Answer. The proceeds of that only run that I had anything to do with—the first run of the new mill—was a plate of silver, which was sent to New York. I can not tell you what it was worth, for I don't know; I have no idea; the value is stated in the printed affidavits; it is in Mr. Garth's statement.

Question. About how large or what was the weight of that plate?

Answer. That I coul !n't tell you. It was a piece of silver about that big [showing]; that was cut into two half circles.

Question. About how much per ton in weight or in value of silver per ton of ore did that reduction show?

Answer. That is what I can not tell you, sir; I can not remember details like that; I couldn't do it.

Question. Well, Colonel, wasn't that a rather important detail to report to the company?

Answer. I did, no doubt, at the time; if I had any reliable data to go back to I could give it to you. It was reported at the time.

Question. Do you remember the result of the assay?

Answer. No, sir; for the assay was the thing. I distinguish between the assay and the net result of the reduction. I just stated that the net result of the reduction I have no knowledge of at all; then when you come to say to show what percentage of silver there was to the ton of ore, I can't remember; I can't do it.

Question. Did you report the assay at that time?

Answer. I can not say, but I imagine I did; I take it for granted I did.

Question. Do you remember about how it compared with the first assay?

Answer. It was vastly less; the first assay was such as to elate me; I went back perfectly satisfied.

Question. From the result of the second assay, as nearly as you can recollect it, taking into consideration the cost of mining and the cost of reduction, what did you consider the prospects of the enterprise to be?

Mr. KENNEDY. I object to that on the ground that the witness has testified that he does not recollect how much ore went into this plancha or plate of silver.

Answer. I recollect how much of the ore went to bring about this result; it was 8 or 10 tons of ore that was ground and treated as an experiment, the first we did, and the result was this plate of silver.

Mr. KENNEDY. Counsel for defendant further objects to the question on the ground that the opinion of the witness as to the prospects of the enterprise is not competent.

Question (by Mr. LINES). What did you report to Mr. Garth as to the prospects of the enterprise from the experience you had had at the mines?

Answer. I can't tell what I said in the precise terms I told him; I told him after this experiment what the result had been. What I said I could not tell you, whether it was $10, $15, or $20 a ton. I was merely going to say that it disappointed us, because it fell far short of what we expected, and Mr. Garth, when I told him, was disappointed. He had very exaggerated ideas in regard to it.

Question. Did you learn which of the various mines owned by the company was regarded as the most valuable before the company went into the enterprise?

Mr. KENNEDY. I object to that as a matter of hearsay and opinion.

Answer. Judging from Mr. Garth's conversation, La Abra seemed to be the one that was looked upon as the treasure house.

Question (by Mr. LINES). Was there any work done during your superintendency in the La Abra mine?

Answer. There was no work done there save on one occasion, when I ordered the head miner, when we found the metal beginning to be exhausted, to go into the La Abra to see what he could get, and if it were possible to put the gang of men there with results. He picked up a few little pieces of ore and came back and said nothing could be done.

Question. Do you know if the La Abra mine had been worked during General Bartholow's superintendency?

Answer. I can not answer the question, sir; I don't know.

Question. Now, what was the condition of the country, politically, during your superintendency?

Answer. In a state of agitation. The Imperialists and Liberals were struggling for ascendancy.

Question. Was there a war going on?

Answer. Yes, sir; there were no active hostilities that I ever saw, but the ports were all held by the Imperialists and the French, and the Liberals were in the interior offsetting them wherever an opportunity presented itself, and there was a collision when they met.

Question. Did you see the troops of both parties during your trips?

Answer. Yes, sir; I used to pass through the Liberal lines and through the French.

Question. How, Colonel, were you enabled to pass from the Liberal lines into the French lines and to return?

Answer. I approached the French lines through the French consul, through my name and my family at home, and the fact that they held offices. The French consul, Mr. De la Foret, gave me a letter to the French commandant, who had taken my arms from me—my pistols; and upon that letter the commandant restored them to me and authorized me to pass his guards armed. That saved me with the French. When I went outside I

went with a party of Americans who had already established in the country, and they introduced me to the Liberals I came in contact with, and the fact that I was an American and engaged with this company satisfied all inquiries.

Question. Now, did you require passes from the commandant of the Liberal forces?

Answer. No, sir. General Bartholow had made a good impression on General Corona, who was supreme then. He had established relations with him, and they never interfered with me, save on one occasion, when they were besieging the port closely and had their lines drawn around the city. I wanted to go into a banking house to get money. I had been eight or nine days on the road, but they would not let me in. I rode to General Corona's headquarters and made an appeal to him, and he received me well, but said it was imperative that no one should go in—that he would not let his own mother in.

Question. Did you know the Liberal officers?

Answer. One or two; never well; always met them kindly on the road.

Question. How did they treat you and your company?

Answer. Always well.

Question. There is a letter in the press copy book concerning what is called a prestemo or forced loan, levied in Tayoltita by Colonel Valdispeno during your superintendency. State the circumstances of that, as far as you know.

Answer. I received from the civil officer in San Dimas, and also at the same time from Colonel Valdispeno, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry—Liberal cavalry—destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one quarter upon us, and the other half was to be borne by the citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, and didn't intend to give it even if I had it. I was advised to do so, or they would come there and rob the place, as it was said to be the habit.

Question. By whom were you advised?

Answer. I was advised by a man named Norton, who had married a Mexican wife.

Question. The same man who was your clerk?

Answer. Exactly. He had been in the Liberal service. He said to me, "It will be to your interest to do it; they will sack this place if you don't." I said, "I am not going to do it, for the good reason that I haven't got the money, in the first place and if I had I wouldn't do it."

Question. What was the result?

Answer. I sent them a few goods—some stuff they wanted, blankets, and hats. I sent them some goods, cotton goods, and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, because the mines had never turned out a dollar. They wrote me an acknowledgment and sent a receipt for the goods and courteous acknowledgments. That was the end of it.

Question. How did the company procure its supplies?

Answer. By purchase.

Question. From where?

Answer. The dry goods I bought in Mazatlan, dry goods and groceries. Corn, forage, and things of that kind they bought in the country not immediately adjacent, but thereabouts. The corn would be brought in pack trains from the distance.

Question. Did you have a large number of men employed?

Answer. At one time quite a large number.

Question. These supplies were for the men?

Answer. For the men, and we had to keep a supply, because the hacienda was the only supply house for the population about there.

Question. You had, then, what is known as a company store?

Answer. Yes, sir.

Question. Now, how were these supplies brought to the hacienda?

Answer. Brought up in pack trains, hired pack trains.

Question. Did the company, to your knowledge, during your superintendency, own mule trains?

Answer. At most they owned twelve mules; not that many all the time, but that is the largest number I ever knew; that is the number of pack saddles we had.

Question. What became of those mules, as far as you know?

Answer. One or two were lost, I know; strayed or stolen, I couldn't say which; the others I turned over to Exall.

Question. Where is General Bartholow?

Answer. I heard he was dead, sir; I don't know.

Mr. KENNEDY. We admit his death.

Question (by Mr. LINES). Do you know whether, during General Bartholow's ascendancy, the company owned any mules more than you have mentioned?

Answer. I couldn't say, sir.

Question. Did you converse with General Bartholow when you took charge, in a general way, about affairs?

Answer. Yes, sir; but I didn't get much information. Yes, he talked to me about it, but I didn't derive all the exact and precise information that I wanted.

Question. Do you recollect whether he told you that the company had owned any mule trains during his superintendency?

Mr. KENNEDY. I object to that, on the ground that it will be hearsay.

Answer. He never told me that they owned any, any more than I mentioned.

Question (by Mr. LINES). Did he ever tell you anything about any mule trains belonging to the company being captured by Mexican soldiers?

Mr. KENNEDY. The same objection to that.

Answer. No, sir.

Question (by Mr. LINES). Now, did he tell you anything about the detention of trains not owned by the company?

Answer. There was a hired train that had been seized. He wrote to the authorities and the train was released.

Question. Do you remember General Bartholow's telling you this?

Answer. Yes, sir.

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Mr. KENNEDY. There is an objection to all these questions as to what General Bartholow told him.

Question (by Mr. LINES). Now, was there any interference during your superintendency of the company by the military authorities with the operations of the company?

Answer. Only in that one instance about that forced loan, and they never appeared on the place then; they never came nearer than San Dimas.

Question. That was the nearest approach to interference by the military authorities?

Answer. Yes, sir.

Question. Was there any interference by the civil authorities?

Answer. Only in the detention of the trains or supplies—pack trains, hired pack trains—that arose from a default on my part to pay the interstate duties. I was ignorant of it.

Question. Now, when you returned to New York and reported the condition of affairs to Mr. Garth, did Mr. Garth say anything to you about the intentions of the company as to the further prosecution of work at the mines?

Mr. KENNEDY. I object, on the ground that it would be hearsay.

Answer. No, sir; he simply told me that he—in fact he said very little, just expressed great disappointment that he hadn't been rewarded earlier by large returns, and said he couldn't settle with me immediately; that he must see the president and directors and talk it over. I never had any other conversation with Mr. Garth; I saw him once or twice—went to his office—and when he was ready he paid me what was due, but he never told me anything that I recollect.

Question (by Mr. LINES). You said he told you that the $5,000 draft—the last draft you drew as superintendent—hadn't been paid. Did he say anything at that time about the intention of the company to send any more money to the mines, or to pay any more drafts?

Answer. He had all along been writing to me, saying that he wouldn't meet them; but I don't recollect that he told me that it would not be paid. I don't recall anything he said to me.

Question. Where did you go after your conversation with Mr. Garth on your return from the mines?

Answer. I went right down to Fort Hamilton.

Question. How long did you stay there?

Answer. I stayed there all that summer. I was several months there staying at the house of a friend. In the fall I went South to my uncle.

Question. That was in 1867?

Answer. Yes, sir; I didn't get any employment till Mr. Roberts gave it to me—till 1868—and was with him till 1869.

Question. What part of 1868?

Answer. Somewhere in the fall of 1868, I think. I was there till 1870, and then the line suspended. Then the Pacific Mail Steamship Company gave me a position and I went out in September, 1870, or the early fall some time.

Question. In what capacity were you employed by Mr. Roberts?

Answer. Purser on a small coasting steamer between New York and Fernandina, Fla.

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Question. Did you make regular trips?

Answer. Yes, sir.

Question. How often did you return to New York on those trips?

Answer. From the time of going till returning would be ten days; then I would be in New York two or three days. I would be there about three times a month.

Question. Who introduced you to Mr. Roberts?

Answer. Mr. Moses Taylor, the president of the City Bank.

Question. Did Mr. Garth know of your employment with Mr. Roberts?

Answer. I couldn't tell you, sir. I never saw Mr. Garth nor had any communication with him whatever.

Question. Did any of the officers of the company know?

Answer. I never heard from any one of them; I don't know whether they did or not; I never knew any of them except in an official way.

Question. Were you ever asked to testify for the company in its claim against Mexico by anybody before or while the claim was pending?

Answer. I never heard of the claim against Mexico till it was brought to my attention by the consul. [Witness pauses.] Exall asked me to testify something; I went before a lawyer with him, but what it was I couldn't tell you to save my life. It was in New York some time, I don't know when, but it strikes me it was on behalf of his claim for wages or pay, but I am not sure; it is a mere surmise.

Question. Then you remember to have seen Exall in New York after his return from the mines?

Answer. Let me think; yes, sir; it must have been when he came back from Mexico, because it was during my service as purser on that small steamer, I think.

Question. Mr. Exall knew where to find you?

Answer. I recollect seeing him—meeting him—and testifying to something for him, in his behalf, but I don't know what it was. I had forgotten that I did see him.

Question. Did you have any conversation with Exall as to the condition of affairs at the mines or his reason for leaving there?

Answer. No, sir.

Question. When you were introduced to Mr. Garth and to Mr. Hearn before you went out as superintendent, did they know what your history had been?

Answer. Yes, sir; fully.

Question. Did they know where your home was?

Mr. KENNEDY. I object to that, as it calls for the knowledge of other persons instead of asking the witness what he told those persons.

Question (by Mr. LINES). Did you tell them what your history had been and where your home was?

Answer. Yes, sir; the party who introduced me was an ex-Confederate. They knew that both of us were ex-Confederates, and they knew my antecedents. I told them what I had been, and I told them at the same time that I had no practical knowledge of mining and that I was not skilled, and doubted my competency to go, and went reluctantly. My friend insisted upon my going and I accepted it under dire pressure of necessity, I will say.

Question. Did you tell them where your family lived?

Answer. Well, I can't tell you that, sir; I think Mr. Garth certainly knew. I wouldn't say, though, that I told them, but they knew my indorsers. My indorsers in New York were the Reverend Mr. Hawkes, Moses Taylor, president of the City Bank, and Thomas L. Beare. They had known me from childhood.

Question. You had no knowledge until you were asked by the Mexican consul, in 1878, to give the deposition which you gave in San Francisco that the La Abra Company had brought a claim against Mexico?

Answer. No, sir; none whatever. The first intimation I had was from the Mexican consul, Mr. Pritchard, and Mr. Heydenfeldt; or, rather, the first intimation I had was a dispatch received from the Mexican minister. It was couched in these terms, I recollect: "Will you, in the interest of truth and justice, identify the letter book of La Abra Silver Mining Company?" It was a dispatch received from the Mexican minister. Then these gentlemen called, and they said, "We won't detain you; will you examine the book?" I said: "I have the book in mind now. I am sure I could identify it."

(It is stipulated that when the stenographer's notes are written out the testimony may be sent by the commissioner to Colonel de Lagnel at Fortress Monroe, Va., to be by him read over and corrected, if necessary.)

JULIUS A. DE LAGNEL.

Deposition of Julius A. de Lagnel, taken at New York City on the 6th and 7th days of July, 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to attorney general; defendants' counsel, Crammond Kennedy, esq.

JULIUS A. DE LAGNEL, being duly sworn, testified as follows:

By Mr. LINES:

1. Question. In the stenographer's report of your testimony taken at Washington, there appears to me to be an omission of a question and answer relating to the letters of Mr. Garth which were presented to you and identified by you. I ask you now, as, according to my recollection, I asked you then, whether you have any doubt as to the letters then presented to you purporting to be from Mr. Garth?

Answer. I have no doubt. I am certain they were the same letters, judging from the fact that the United States seal, placed upon them in California, is still upon them, or was at the time I gave the testimony, and when I testified I knew they were the letters.

2. Question. You have no doubt that they are original letters written by Mr. Garth and addressed to Mr. Exall?

Answer. No.

3. Question. I want to call your attention to part of your testimony before the Senate committee in 1888, on pages 10 and 11. You were asked concerning two letters on pages 176 and 189 of the press copy book which you stated were written by James Granger. Who was Mr. Granger?

Answer. I do not know, further than that he was a gentleman that came to the place with Mr. Exall.

4. Question. Had he any connection with the office of the company in Tayoltita?

Answer. No. He came there as a friend of Mr. Exall and remained until I came away. He was not an employee of the company.

5. Question. How do you account for his letters being in the press copy book of the company?

Answer. He wrote no letters while I was there.

6. Question. Did he during your superintendency act in any way as a bookkeeper?

Answer. Yes; when Norton went away he did what was necessary.

7. Question. But he was not ever officially employed?

Answer. Not by the company.

8. Question. Do you remember about what was the average cost per ton of mining the various ores and bringing them to Patio?

Answer. No.

9. Question. Or the cost of their reduction at the mill?

Answer. No, sir.

By Mr. KENNEDY:

9½. Question. I understand that you arrived at Tayoltita sometime late in April, 1866?

Answer. About that time.

10. Question. How soon after that did you write to Mr. Garth?

Answer. I could not tell you, exactly. I must have written to him when we went down to the port, General Bartholow and I, when General Bartholow was coming away; but whether that was in April or early in May I could not tell.

11. Question. What was your habit as to writing Mr. Garth while you were superintendent at Tayoltita?

Answer. I used to write by every mail possible. I think the mails were monthly.

12. Question. How long after you arrived at Tayoltita did you make the assay with Mr. Elder at La Puerta?

Answer. I can not state the day, but it was after the departure of General Bartholow and while Mr. I. V. Hardy was still there.

13. Question. Do you remember when Mr. Hardy left?

Answer. I do not. They were two brothers, and they left one before the other.

14. Question. Give your best recollection as to how long it was after your arrival in Tayoltita that the assay was made at La Puerta?

Answer. It would be mere guesswork; I do not pretend to be accurate, but I think it was sometime between the first and the middle of June.

15. Question. Do you recollect whether the first letter that you wrote to Mr. Garth was copied in the letterpress copy book?

Answer. That I could not tell you. It is hard to answer any questions at this length of time.

16. Question. The first letter that is printed in the copy of the letterpress book, appearing in "Senate Document No. 2705," to Mr. Garth from you, is dated July 6, 1866. Do you think that is the first letter that you wrote him?

Answer. No, sir; I had written to him previously.

17. Question. In the interval between your arrival and July 6, 1866, how many times do you think you had written to Mr. Garth?

Answer. I wrote him about once a month. The steamer only came once a month.

18. Question. Have you no distinct recollection of writing to Mr. Garth shortly after the business of the mines was turned over to you by General Bartholow?

Answer. I am almost positive that I wrote to him from Mazatlan, when General Bartholow and I went down together at the time of his departure and the surrender of the books to me, and I must have written my letter to him before the books were surrendered, and it was impossible to make any copy, because (what fixes it in my mind is that) it was in that letter that I told him what little I had been able to discover as to the indebtedness that was so unexpected to me and which involved the expenditure of a large amount of money.

19. Question. Fix as nearly as you can the date of General Bartholow's departure from Mazatlan.

Answer. I think it was either by the May or June steamer; I could not tell you which, but it was one of the two.

20. Question. On page 260 of "Senate Document No. 2705" I find a note addressed to you by General Bartholow, dated at Tayoltita, May 5, 1866. I ask you to look at that note and, if it refreshes your recollection, to state how long after that note was received by you General Bartholow left the mines?

Answer. It was not long, because he did not remain long after I went there. I could not tell the time.

21. Question. On pages 264 and 265 of the same document there is a statement of the affairs of La Abra Silver Mining Company, brought down to May 31, 1866, and signed by you. I ask you to look at that and to say whether it was forwarded by you to Mr. Garth; and if so, whether with or without a letter?

Answer. Is this in the letter book?

22. Question. That Senate document is supposed to contain a true copy of the letter book.

Mr. LINES. I think it was stipulated by counsel before the committee that it did contain a true copy of the letter book.

Mr. KENNEDY. That is also my recollection.

Answer. There is something wrong here. [Witness looking at Senate Document No. 2705.] There was a larger indebtedness than this, because I recollect writing to him from Mazatlan, at what time exactly I can not tell, but it was when General Bartholow and I went down. I recollect writing him that I would have to draw upon him for $30,000, and I drew $15,000 at once and $15,000 by the following May. The amount was greater than this, I think.

23. Question. The question does not relate to the correctness of the statement which you have been examining, but to the fact whether or not that statement was forwarded by you to Mr. Garth at or about the time of its date, and whether or not you sent a letter to Mr. Garth with the statement?

Answer. I can not say whether I sent a letter or not. I presume I did always send a letter of advice, but it might have been accidentally omitted. It does not appear here.

24. Question. In your letter of July 6, 1866, to Mr. Garth, you say: "To Mr. Adams I would also write, but my feelings forbid the attempt." Who was Mr. Adams?

Answer. I do not recollect who he was.

25. Question. In the same letter you say: "During my absence at Mazatlan the first heavy rain fell, and owing to the want of a good foundation in a part of our mill wall," etc. Had you been at Mazatlan between the time of your first arrival there and the date of this letter?

Answer. Yes, I think I had.

26. Question. State the date of your second visit to Mazatlan.

Answer. I could not tell you.

27. Question. How long prior to the 6th of July was it?

Answer. I am answering at random. I do not think, prior to July 6, I had made but one visit to Mazatlan.

28. Question. That is, after your first arrival?

Answer. Yes.

29. Question. The next letter from you to Mr. Garth appearing in this document is dated the 16th of August, 1866. Do you think that you did not write him between July 6 and August 16?

Answer. I could not answer that question unless I saw something that suggested it to me. I would not say I did not, but I could not tell you what I did.

30. Question. The next letter that I find from you to Mr. Garth is on page 279 of that same document, and is dated September 7. Notice the interval between August 16 and September 7, and then, if that refreshes your recollection as to the intervals between your letters, state whether you now think that you did or did not write to Mr. Garth between July 6 and August 16.

Answer. I could not tell you.

31. Question. The next letter from you to Mr. Garth appearing in this document is on page 284, and is dated the 8th of October. The first sentence in that letter reads as follows: "The nonreception of my letters written last month has no doubt caused you some surprise and uneasiness, but causes beyond control operated to prevent the mail matter sent down by courier from reaching the port." What letters "written last month" did you allude to?

Answer. I could not tell you now. I suppose letters written from there on business to him. I have no recollection of the letters, and would not know what I had ever written, unless I read back there. I recollect that circumstance, sending down mail matter and its being returned because of the death of the boy.

32. Question. You say in that same letter: "About a week subsequently I learned the fact, and by sending recovered the letters." Now, my question is whether those letters, which you say in this letter were written to Mr. Garth last month, were actually written—that is, you have no doubt about it, have you?

Answer. Of course not. I wrote them as a matter of course, and sent them, and they came back to me.

33. Question. Now, I want to ask you whether you have a distinct recollection of copying all the letters that you wrote to Mr. Garth in the letterpress copy book which you have identified on your former examination?

Answer. I think I must have written private letters, because there is one letter in my recollection that I know I wrote him, and I do not see it at all in this document.

34. Question. I have shown you by this printed copy of the letterpress book that you wrote no letter at all to Mr. Garth from the time of your arrival until July 6, 1866, and now I ask you whether that is or is not the fact?

Answer. No, sir; for I wrote to him from Mazatlan, stating the surprise I felt at the condition of affairs as differing from that represented to me in New York at the time I started.

35. Question. And did you not also write to him after that and prior to July 6, 1866?

Answer. That I could not tell you.

36. Question. Did you not write to him at your second visit at Mazatlan?

Mr. LINES. The witness has stated that he thinks he made but one visit to Mazatlan after first reaching the mines and prior to July 6, 1866.

Answer. That is as far as I can recollect; that is the only visit that occurs to me; and what fixes it in my mind is that when I went down with General Bartholow, at the time of his going away, he transferred the funds to another banker, and when he gave me the books he held them in his possession until the very last moment, and at that time I wrote to Mr. Garth a letter, which I do not see here, telling him of this large indebtedness that I found existing, as well as I could ascertain it from my inadequate knowledge of bookkeeping, and that it would be necessary to call on him for that large amount.

37. Question. Do you recollect about the date of your first draft on Mr. Garth?

Answer. No, sir; I do not.

38. Question. You say you wrote a private letter to Mr. Garth, of which you have a distinct recollection?

Answer. A recollection of its occurrence and of the main thought that animated it, but its general expressions I could not speak of.

39. Question. That is what I meant. Now, let me ask you why you did not put that letter in the letterpress copy book?

Answer. I could not tell you why I did not do it. I do not know that there was any special motive for it.

40. Question. Have you a distinct recollection of writing to Mr. Garth about the results of the assay that you and Mr. Elder made at La Puerta, as to the fact that you did report that assay to him?

Answer. I have a distinct recollection that I did write to him and made an exact report of what the assay showed to be the value of the metal.

41. Question. Did you mention to Mr. Garth that Mr. Elder assisted you in making the assay?

Answer. That I could not tell you.

42. Question. Did you tell Mr. Garth in that letter what the results of the assay were?

Answer. Yes.

43. Question. Now, do you know of any reason why that letter does not appear in the letterpress copy book.

Answer. I can not answer that question.

44. Question. Have you any recollection as to whether you made a copy of that letter in the letterpress copy book or not?

Answer. I have no recollection of it now, but I take it for granted that I must have.

Mr. LINES. I object to the last part of that answer, and I move to strike out "I take it for granted I must have."

45. Question. Was it or was it not your habit to copy the letters that you wrote ont he business of the company in the letterpress copy book?

Answer. It was.

46. Question. Did you write that letter (regarding the assay at La Puerta) at La Puerta, or after you returned to Tayoltita?

Answer. I wrote it after my return. There were no facilities at La Puerta for me.

47. Question. Was this letter so written by you, written in the company's office at Tayoltita?

Answer. I presume it was. I had no recollection, but I take it for granted that it was.

48. Question. The next letter of yours, after the one dated October 8, 1866, to Mr. Garth, appearing in this document, I find on page 286, and it is dated 17th November, 1866, and in the first sentence you say to Mr. Garth: "I have to acknowledge the receipt of your letters of the following dates, viz: July 31, August 10, 29, and 31, September 10 and 21, and letter of introduction, all brought from Mazatlan and delivered to me by Mr. Exall at Comacho, 30 miles from this place, about October 16 or 18." Now, what was Mr. Garth's habit of writing to you? I mean in respect of the departure of the mails from New York. In other words, did he write to you every mail?

Answer. He wrote very frequently; can not say he wrote every mail.

49. Question. Do you recollect whether there were more mails came to you than left from your place?

Answer. The departures from New York were more frequent. Ours were only monthly coming this way. But going from New York there, I suppose every ten days, they had an opportunity of writing from this end, and they would accumulate and be sent up to me; but my opportunity was only once a month.

50. Question. Your next letter in this document appears on page 299, and is dated December 15, 1866, and on the very next page is another letter from you to Mr. Garth dated January 5. Now, you will notice that there is an interval of twenty-one days between these two letters. How do you account for the fact that there are other intervals so much longer between your previous letters?

Answer. What other intervals?

51. Question. The first interval to which I invite your attention was that which occurred between your arrival at the mines and date of the first letter which appears in this book, that is, from some time in April to the 6th of July, 1866?

Answer. I can account for that interval by the nonappearance in the letterpress copy book of a letter which I wrote from Mazatlan to Mr. Garth.

52. Question. In a general way, state what that letter contained.

Answer. That letter contained a statement of the financial condition of the company, so far as I could discover it, as contrasted strongly with the statement made to me when I left New York.

53. Question. Do you mean that you found that there was a greater indebtedness at the mines than Mr. Garth had represented to you?

Answer. I do.

54. Question. Do you recollect whether you wrote to Mr. Garth shortly before you left the mines on your return to New York?

Answer. That I could not tell you.

55. Question. Don't you recollect whether you gave him any notice that you were returning?

Answer. I had written to him all along for months back. I could not tell you whether I mentioned that to him or not.

56. Question. I find a letter of yours on page 297 of this Senate document, to Mr. Garth, dated February 5, 1867, and I find no other letter from you, to him, after February 5, 1867. Now, will you state what your best recollection is in regard to the fact, whether or not you never wrote to Mr. Garth from Tayoltita after the 5th of February, 1867?

Answer. I could not say.

57. Question. I ask for your best recollection?

Answer. I have no recollection at all.

58. Question. When did you leave Tayoltita on your return?

Answer. About April, I think. I think the first days of April; I am not sure.

59. Question. Supposing you left early in April, do you think that you did not write to Mr. Garth between February 5 and early in April?

Answer. I could not say.

60. Question. That is, you have no recollection?

Answer. I have no recollection that would guide me in an answer at all.

61. Question. To whom did you turn the business of the company over?

Answer. To Mr. Exall; everything.

62. Question. Did you do that without in any way consulting or even notifying Mr. Garth?

Answer. Absence of recollection forbids an answer.

63. Question. On page 301 of this same Senate document I find a copy of a letter from you addressed to William C. Rallston, cashier Bank of California, and dated Mazatlan, April 10, 1867, in which you advise him that you inclose duplicate drafts for $5,000 (gold coin) in his favor against D. J. Garth. Now, did you draw against Mr. Garth on the 10th of April without giving him notice?

Answer. I have no recollection whether I wrote him or not.

64. Question. Do you mean to say that you would draw for $5,000 on the treasurer of your company without advising him of it?

Answer. I think not.

65. Question. Is it because there is no letter from you to Mr. Garth appearing in this copy book subsequent to February 5 that you have a doubt as to whether you wrote to Mr. Garth after that or not?

Answer. No; it is simple absence of all recollection; an utter blank.

66. Question. What was your habit, when you drew against Mr. Garth, in regard to notifying him of your drafts; did you notify him or not, as a rule?

Answer. I could not answer that question, to save my life, yes or no.

67. Question. As a business man, what would you think of anyone who had the habit of drawing on the treasurer of his company without giving him notice?

Mr. LINES. That is objected to as irrelevant.

Answer. I was a novice in this business; I am not a proficient now. I did the best I could under the circumstances, and I presume I did then what my best lights prompted me to do.

68. Question. If you had seen in this book a copy of a letter written by you to Mr. Garth on or about the 10th of April from Mazatlan advising him of the fact that you had drawn on Rallston, would it have surprised you?

Mr. LINES. That is objected to on the same grounds.

Answer. No.

69. Question. What books were kept by the company at its office in Tayoltita?

Answer. There were memorandum books called ore books, in which the weights of the various quantities of ore as brought from the mines were entered at the time of arrival, and weight. Then there were the ordinary books, a daybook, journal, and ledger, and books of that kind, and there was a large blotter for daily use on the counter. I do not recollect the others.

70. Question. Have you mentioned a cashbook?

Answer. And a cashbook; yes.

71. Question. Now, did you make any new books?

Answer. Yes.

72. Question. What books did you make?

Answer. The two or three books, whatever they were, were recopied and corrected.

73. Question. What became of the old books and the new ones that you opened, so far as you know?

Answer. They were all left together in the desk, and at the time of my departure they were all there.

74. Question. You turned them over to Mr. Exall?

Answer. The whole of them; yes.

75. Question. Do you remember a man at Tayoltita by the name of Guadalupe Soto?

Answer. Yes, sir.

76. Question. What business was he in when you were there?

Answer. I only knew him as keeping a place of resort, a wine shop. I was never in the place. I don't know, except that he sold wine.

77. Question. How far was his wine shop from the office of the company?

Answer. It was only across the road, possibly 80 or 100 feet.

78. Question. In your examination before the Senate committee you spoke of Soto selling mescal to the miners and others. Will you please explain what mescal is?

Answer. It is a product of the hemp.

79. Question. In that same examination, you spoke of gatherings at his shop on Saturdays and Sundays at which there was drinking and gambling, and you said that those proceedings would sometimes become saturnalian?

Answer. Well, they would last all night, and you would find them stretched out in the morning, the candles burned out, and everyone asleep.

80. Question. So far as you know, did any of the miners in your employ frequent that shop?

Answer. I presume most of them did; I don't know. I never asked any questions. I never was there.

81. Question. You spoke of Soto in that same examination as exercising a pernicious influence upon the miners and as being hostile to the company. What did you mean by that?

Answer. That is derived from hearsay and not my own knowledge. As I say, I did not know the man except to pass him and bow to him. He would always bow respectfully to me, but with a countenance that indicated no love.

82. Question. Let me ask you whether he was a magistrate, or justice of the peace, at the time you were there?

Answer. He was; yes, sir. He was elected, I believe, a judge by the people.

83. Question. Before you left?

Answer. Before I left; I think so.

84. Question. Do you recollect, in a general way, how long before you left?

Answer. No; I could not tell you.

85. Question. You had no experience with Soto, yourself, as a magistrate?

Answer. No; I never was before him. I had no dealings with him that I recollect.

86. Question. In that Senate examination you gave an account of a hostile demonstration of the workmen the morning that they came armed when you were short of money, and you expressed the opinion in that examination that Soto was in some way connected with that demonstration. Let me ask you what you meant by that?

Answer. I did not attribute it to him. If I recollect aright I said the influence of the gamblers and liquor sellers. The desire was for ready money. If I referred to him, I don't recollect what I said; but if I referred to him it was this, that, being a liquor dealer, he wanted the ready money to answer for his wine, and the gamblers wanted the ready money to lay down on the little green cloth.

87. Question. In that examination this question was put to you and you gave the following answer:

"Question. Were the revenues of the company and its disbursements a source of profit and supply as well as the miners?

"Answer. I presume there was considerable profit. The ready money, from what I was told and my own observations day by day, passed either to the man who dispensed the wine or the man who dealt in cards, and that the cessation of the stream of supply caused this ill feeling on the part of these people, and that these gamblers and others—I will not throw the whole burden on this old man, but I thought he was in this plot; that is, so far as that demonstration at the hacienda."

88. Question. My question is, in what way did you connect this old man, Soto, with that hostile demonstration?

Answer. Simply from the fact that his house was a place of resort, and there must have been an organization, or plan or design of some kind, and they must have done it when they came together, and as that was the only gathering place and that is where the wine was dispensed, I took it as a matter of course that he may have influenced them. I can not say that he did influence them. I did not hear him. I am only giving an inference.

89. Question. In that same examination you spoke of the attack on the Rosario and Candalaria mines (page 108), and you said that the mines were abandoned because of the attack and the murder of the engineer; whether more than one you did not know, but you knew there was loss of life. How did you know that?

Mr. LINES. That question is objected to as irrelevant, incompetent, immaterial, and as not proper cross-examination.

Answer. I was told by a man who was present, one of the workmen, who was afterwards employed by me.

90. Question. Let me ask you whether, if you had not kept cool and shown that you were neither afraid nor confused, there might not have been serious work at your mines at that demonstration?

Mr. LINES. Objected to as calling for the supposition of the witness and as incompetent, and, further, as not proper cross-examination.

Answer. That I can not say.

91. Question. I am asking for your opinion, and that is what my brother Lines objects to. Give me your opinion.

(Same objection.)

Answer. When men come armed into my presence I presume they come with a purpose; I think there is some sinister purpose. If we had the force to resist them, I think they would possibly have made a demonstration. They were being urged to do it right in my presence.

92. Question. Who were they being urged by?

Answer. By one of the miners that I paid and sent away at once.

93. Question. Do you know his name?

Answer. No, sir; a Mexican.

94. Question. He was a Mexican?

Answer. Yes; a full-blooded Mexican.

95. Question. In that same examination, on page 109, you said, in answer to a question put to you by Mr. Foster, counsel of the Mexican Government: "I recollect one night (the only night I ever spent in Mr. Rice's hacienda), I recollect on that occasion the sentiment in the town was so hostile that they told me they were expecting an attack at any moment, and were prepared to resist it. That I remember perfectly. I slept in the hacienda that night. As I passed through the town I came—it is a peculiar place to get in; you have to wind up the side of a formation that can be barred by a dozen men; you go through a deep ravine and then to the hacienda, so that people in the town would look down into Rice's hacienda below. These explosions only occurred, I may say, when they were possibly half full of liquor, but that is very frequently. That night I could hear, as I lay down to sleep, the cries of these people, blackguarding and cursing the people in that hacienda." Was there any apprehension, so far as you could see, on the part of the Americans at Mr. Rice's hacienda that night of harm?

Mr. LINES. Enter the same objection to that question as incompetent, immaterial, irrelevant, and not proper cross-examination. This objection is made to all testimony referring to apprehensions on the part of the officers of the Durango Mining Company or overt acts against said company or any persons other than the defendant, the La Abra Silver Mining Company.

Answer. Yes.

96. Question. In that examination before the Senate committee, on the subject of the Mexican hostility to the United States and Americans in general, you spoke of a scheme which General Butler was suspected of entertaining. What was that scheme?

(Objected to as incompetent and irrelevant.)

Answer. In a general way it was the occupation of Lower California by purchase or otherwise.

97. Question. You said in regard to that report, on page 95 of your examination before the Senate committee, what follows: "One evening an old man of more than average intelligence was in and they were speaking of the condition—that was after the expulsion of the French, the withdrawal of the French—speaking of the political condition of affairs, and a report had reached there that a company was formed by General Butler to seize the upper States, and it created intense excitement generally among the people, and I spoke to this man—spoke badly, of course, but could make myself understood—and he said he was always glad to see Americans or anyone else who came with the right motive, but the moment he was satisfied they came there for the purpose of seizing their Government or interfering in any way he would cut their throats." Who was that old man?

Mr. LINES. Question objected to as incompetent and irrelevant.

Answer. That I could not tell. He was not a full-blooded Mexican. He was a man as white as I, with a good deal of Spanish blood. He came in where I was staying over night. I could not tell who he was.

98. Question. From what you saw and heard down there at that time did it seem to you that the people really believe that there was such a scheme on foot?

(Same objection.)

Answer. That I could not say, for I did not mix with the people enough. I did not see the people outside.

99. Question. You spoke in that same examination of a clerk that was in your employ, a Mexican. What was his name?

Answer. Sainz.

100. Question. Referring to him, you said in your examination before the Senate committee, at page 95: "My own clerk, a young man who was employed in the store, a Mexican, born and raised in San Ignacio, 70 miles from the mines. He had been educated in California, and spoke English as well as I could. In talking with him one evening discussing this very thing (General Butler's scheme) he just scouted the idea of the withdrawal of the French being due to the United States Government, and I tried to show him that without the United States Mexico would never have got rid of the French; but he scouted it, and speaking of what the Mexicans were capable of, and so went on to speak as if they were able to take care of themselves with any people or peoples. I said,

speaking to him: 'You ought not to give heed to these reports,' something of the sort, 'because the Americans are friendly to you. They certainly have shown it in this late action of the Government in assisting in ridding you of this foreign control, and you ought to feel kindly toward them.' He said, 'We hate them.' I said—he was only a boy—'How can you?' I said, 'I was here in 1847, in the City of Mexico, and you were born about the close of the war. You are a boy now; how can you have that feeling?' 'I have no feeling one way or another toward you except, because' he said, 'it was taught us by our fathers. They have told us all, and they keep at it.'"

Now, what have you to say in regard to the hostility and prejudice that existed as a matter of fact in the minds and hearts of the Mexicans toward the United States and our citizens at the time you were there?

Mr. LINES. That is objected to on the same grounds as before, and that it does not call for the statement of any facts, but for an expression of opinion.

Answer. I am not prepared to give any answer to that. I merely mention incidents in my knowldge, and leave you to infer yourself.

101. Question. And those incidents are true?

Answer. Yes. I can see the picture before me now, that boy talking to me.

102. Question. You spoke in your examination before the Senate committee of a particularly rich find that was made while you were superintendent, the gold, you said, being visible like little pin heads in the ore. What was done with that ore?

Answer. It was put, I suppose, with the rest of the ore.

103. Question. What mine was that taken from?

Answer. El Cristo.

104. Question. Do you remember what ore it was that was the subject-matter of the assay that you made at La Puerta?

Answer. That was La Luz.

105. Question. You spoke in your examination before the Senate committee about some plan that had been entertained by the company or suggested to the company by one of its employees in regard to tunneling La Abra?

Answer. Yes.

106. Question. Was anything ever done in that direction?

Answer. No.

107. Question. How much of an undertaking would that have been?

Answer. It was reported to me—I don't know—but it was reported to me that $14,000 or $15,000 would do it.

Mr. LINES. That is objected to as hearsay.

108. Question. In your direct examination you spoke of meeting Exall after he had returned from Mexico, and going with him to a lawyer's office, and having some conversation in regard to a claim. Do you mean that you thought at the time you had the conversation that it was a claim or that you thought during your direct examination that it was a claim that he wanted to talk to you about, that he did talk to you about?

Answer. It occurred to me during my direct examination. I have no positive knowledge or recollection of it.

109. Question. So that you were not speaking of a recollection or an impression which you had at the time of your interview with Exall?

Answer. I had forgotten the matter entirely. It was a blank to me.

110. Question. Why did you mention meeting Exall in connection with questions that were put to you regarding the officers of the company? Did you regard Exall, after he had left the mines and had come to New York, and had what you supposed to be a claim against the company, as being then an officer of the company?

Answer. I answered it because the recollection simply came to my mind that the man appeared to me, as it were, by magic.

111. Question. You did regard him as an officer of the company?

Answer. No. I spoke merely of him as an individual I had met. I was asked if I had met him, and I had forgotten it, and possibly had said I had not; I don't know, but he passed entirely out of my mind.

112. Question. Had you any conversation with Exall as to the reasons he left the mines of the company in Mexico?

Answer. I don't recollect it. I had forgotten even seeing him. I do not recollect anything he said to me.

Redirect examination by Mr. LINES:

113. Question. When, do I understand you, did you go to Mazatlan to accompany General Bartholow?

Answer. I can not fix the date.

114. Question. How long after you arrived at Tayoltita?

Answer. I can not fix it whether he went down on the 1st of June or whether he went down in the month of May. I can not say. I rather think it was some time in the month of May, but I will not be certain.

115. Question. You don't remember about how many days you remained in Tayoltita after your arrival before returning to Mazatlan with General Bartholow?

Answer. No, sir; I could not. I was there some little while without being acknowledged. I was there as a guest, as it were, for some days while he was getting ready.

116. Question. When did you consider yourself fully in charge?

Answer. Not until he gave over everything to me in Mazatlan.

117. Question. He turned over?

Answer. Everything to me in Mazatlan, so far as he did turn anything over. He gave me the letter book and others, that is all, and the moneys.

118. Question. How soon after turning things over to you did he sail?

Answer. Immediately; that afternoon. I think it was the same afternoon. He may have stayed there a day, but not longer than that.

119. Question. At what time, with reference to his turning over the books to you, did you write the letter to Mr. Garth of which you have spoken?

Answer. The letter came home by the ship in which he sailed.

120. Question. Did you write it before or after he turned over the books to you? You have said he sailed almost immediately after turning the books over.

Answer. I can not say what precise moment. He gave them to me at the hotel. I made the examination before I came down.

121. Question. If I understand you, you considered it a private letter to Mr. Garth?

Answer. That letter—no, sir; that letter in which I made the statement was, I think, an official letter. I can not recollect dealing with anything but the subject-matter of what I found, as contrasted with what they supposed in New York, to exist.

122. Question. How much greater indebtedness did you find apparent from the books than you had expected from your conversation with Mr. Garth to find?

Answer. Mr. Garth had told me that there was no indebtedness. He did not think there was any indebtedness. So far as he was informed, there was none; but, without being able to tell you exactly, I found between $20,000 and $30,000.

123. Question. What was the nature of this indebtedness generally?

Answer. For personal service and supplies, bills outstanding.

Mr. KENNEDY. Enter an objection to that question and answer on the ground that the financial statement, which is contained in the letterpress copy book, shows the facts.

Question. During your superintendency how much of that indebtedness did you liquidate?

Mr. KENNEDY. Objected to on the ground that the correspondence in the letterpress copy book shows that all the indebtedness was liquidated.

Answer. I was under the impression that I paid all.

124. Question. Was or was not the company in debt at Tayoltita when you left?

Answer. I can not answer positively, but it would be very small I think. There was a small money balance on hand at the bankers. I think the debts were pretty nearly all paid off.

125. Question. What did you do with the $5,000 you received from your draft on Rallston?

Answer. I gave it to Mr. Exall. I did not touch it. It was in the banker's hands, and I got a receipt. I have it now. I found it the other day. It is simply a slip of paper, but I kept it with receipts from the adjutant-general; some moneys I turned over to him some years ago.

126. Question. Was the company in debt to you personally?

Answer. Yes.

127. Question. How much?

Answer. I can not tell you the exact amount; some $500 or $600.

128. Question. Was that indebtedness ever liquidated?

Answer. Yes; Mr. Garth paid everything; not immediately, but after being home a couple of weeks or a month possibly.

129. Question. Mr. Garth paid it to you?

Answer. Yes.

130. Question. How?

Answer. I could not tell you whether he gave me a check or gave me the money down. He paid me all he owed me.

131. Question. Did he give you a check of the company?

Answer. I could not recollect.

132. Question. Or a personal check?

Answer. I could not tell you whether he gave me a check or whether he gave me notes down.

133. Question. Do you know whether the funds came out of the company's treasury or from Mr. Garth?

Answer. I don't know where they came from. He said very little to me; he just gave me the money.

134. Question. Did you write home by the steamer going to Panama, or the steamer going to San Francisco; both, or by only one of them, and which?

Answer. We sent up from Mazatlan to San Francisco, and the mails were there dispatched by the Panama ships, I presume.

135. Question. The Pacific Mail steamer did not stop at Mazatlan?

Answer. No, sir. There was a small line that used to run in there, between Mazatlan and San Francisco; Mazatlan was one terminus and San Francisco the other.

136. Question. So that all of your mail went via San Francisco?

Answer. I think so.

137. Question. In sending your mail to the coast, did you have regular couriers, or were there post-office facilities?

Answer. There were no post-office facilities at all. We used to ride down ourselves and carry the letters. I generally came down, or, if I did not, I would have to send a courier; a boy would go down on foot and back.

138. Question. Did you have any regular times for sending a courier?

Answer. Timed only by the arrival and departure of the steamer. We knew about the dates the steamer would be there, and sent a boy down in time to deliver those to go and ask for anything that might be received.

139. Question. Was there any specified time for preparing the mails to be sent to the United States?

Answer. No; none except as my judgment dictated, and I would sit down and write.

140. Question. Would you write when anything happened and when it was fresh in your memory?

Answer. Yes.

141. Question. And sent that letter by the next opportunity?

Answer. We never let them lie over. The letters were sent as soon after writing as possible.

142. Question. There was no regular mail day at your office?

Answer. No.

143. Question. Did you write personal letters to your friends in the States?

Answer. Yes.

144. Question. Were there other letters written by other persons at your mines to the States?

Answer. The other residents at the mines?

145. Question. Yes.

Answer. I presume these were. I take it for granted. I don't recollect. Whatever was to go was put in a bundle and either taken by us, in saddlebags, or given to a boy, in a little bundle wrapped in oil silk.

146. Question. How did you send your own personal letters, and such of those of your employees as were addressed to the States?

Answer. They came down—either I brought them down myself, or whoever happened to be riding.

147. Question. I mean your correspondence with your family, for instance; to whom did you address that?

Answer. We would send our mail to the banking house of Echeniqua y Peña, and they would put them in the mail.

148. Question. Did you or did you not send personal letters under cover to Mr. Garth?

Answer. My own?

149. Question. Yes.

Answer. You mean to others than Mr. Garth?

150. Question. Yes; for him to mail?

Answer. I could not tell you that. I do not know why I should. I might have done so; my wife was East.

151. Question. Where you speak in the letter, to Mr. Garth, of October 8, 1866, on page 284 of the Senate report, of the nonreception of your "letters written last month," did you use the word "letters" in reference merely to letters addressed to Mr. Garth, or might you have referred to other letters nonofficial?

Mr. KENNEDY. There is an objection to that on two grounds: First, that the letter referred to speaks for itself; second, that what the witness might or might not have referred to is incompetent.

Answer. I could not tell you. I could not say what letters I referred to except the letters I had written to him.

152. Question. You are not sure then that they were letters addressed to Mr. Garth?

Answer. Some of them were, I am sure; but I can not tell what others.

153. Question. I notice several letters addressed by you to the bankers in Mazatlan and one addressed to Mr. Rallston in San Francisco, indicating that you sent letters for the States under cover to this gentleman.

Answer. I don't remember that.

154. Question. Why did you ask Mr. Garth to come down in the private letter of which you speak, which is not found in the press copy book?

Mr. KENNEDY. Objection is made to that on the ground that the nonproduction of that letter has not been explained, and that it would be its own best evidence, and the burden of that explanation is upon the Government, because the Government has produced this letterpress copy book as containing a correct and complete transcript of all the correspondence between the superintendent at the mines and the treasurer in New York, and when that letter book is shown to be incomplete and misleading, the burden of making the explanation of that defective character of the book is upon the party presenting it.

Answer. Because I felt that I was unequal to the charge, and I did not care to have any one's interest in my hands to their injury.

155. Question. What induced this feeling on your part?

(Same objection.)

Answer. I suppose the feeling that everybody has who feels himself in a false position. My idea was that an expert, a man well versed in the business, should be there. There was too much at stake, too much at interest, and I felt that I was not equal to it, and, therefore, I asked him to come down and look at the condition of things himself, and if he saw fit, to either take charge himself or put some fitting person in charge.

156. Question. Did that feeling have any connection with your discovery of the unexpected indebtedness of the company?

Mr. KENNEDY. The objection to that is on the ground that the witness has testified that Mr. Garth furnished him with funds to pay off all that indebtedness.

Answer. So far as I can now recollect, the impression in my mind, the feeling now with me, has always been, that it was my own desire to escape from a false position.

157. Question. About what time did you write that letter?

Answer. I can not tell you, but I think it was in the fall some time; early in the fall, I think.

158. Question (by Mr. KENNEDY). Of 1866?

Answer. Yes.

159. Question (by Mr. LINES). In what respect did you feel yourself incompetent to conduct the affairs of the company?

Answer. It wanted a man with more knowledge than I had; it wanted a qualified man to take charge of the mines, in the first place.

160. Question. How qualified?

Answer. An experienced miner. All mining is not simply blasting and knocking away of rock; and the mines wanted to be opened intelligently.

161. Question. Did you have no such man under your control?

Answer. I had men who were there as miners, but it did not strike me they were such men as should be in charge. They were good to control a gang of workmen under intelligent orders.

162. Question. How about the extraction of the silver from the ores?

Answer. Then, as to which mines to work; whether to stop work as it was going on then, and attempt this side effort, that would cut the mines, which was an expensive thing, or whether any one mine should be prosecuted, or the work in it prosecuted in preference to the others, and the financial part of it just as well.

163. Question. How about the extraction of the ores; did you feel that you were qualified in that respect—the extraction of metal from the ores?

Answer. I would be when it was ready.

164. Question. I mean as to skill and experience?

Answer. No, I knew perfectly well that I was not. I found after I got there that it required a degree of knowledge that I did not possess.

165. Question. And the men under you, how about them?

Answer. No, they did not possess it.

166. Question. You thought then, as I understand you, that neither in the matter of conducting the mining operations, or the reduction of the ores, or the financial part of the operations, was the company properly represented?

Answer. I admit that I was unequal to it, and therefore I sought——

167. Question. And there was no one in the service of the company who was equal to it?

Answer. That I don't know. I had seen no one.

168. Question. I am asking for your opinion at the time you wrote this letter?

Answer. No one that I knew; no.

169. Question. Do you know what experience Mr. Exall, to whom you turned over the company's affairs, had as a miner, as a metallurgist, or as a financier?

Answer. I knew nothing of his history or antecedents. I only knew him for the six months that he was there, and while I was associated with him.

170. Question. Do you know what was his age?

Answer. He was a man between 20 and 30, I think. I do not think he was 30. I could not pretend to say.

171. Question. Do you know whether he had had any experience at all?

Answer. That I don't know. I know where he came from; that he was sent out from New York; but I knew nothing of his antecedents.

172. Question. Didn't you know what he had been engaged in?

Answer. Some sort of business; what it was, I don't know.

173. Question. Your last letter in the press copy book appears to have been dated the 5th of February. Do you recollect about what time the steamer left that month?

Answer. No, sir; I could not tell you.

174. Question. Do you remember about what day in the month, usually, the steamers left?

Answer. No; if I could fix the date of the steamers I could have a starting point, but I can not.

175. Question. You were in Mazatlan, as appears by the testimony, on the 10th of April, 1867, on which date you made a draft for $5,000 on Mr. Garth; do you remember how soon after making that draft you sailed for San Francisco?

Answer. Almost immediately, I reckon. I don't know whether it was on the same day or the next day; I could not tell you, because I came down to meet the steamer, and of course we never designed laying in the port any length of time, and I think she must have sailed very soon.

176. Question. Do you know whether your draft went on the same steamer you did or not?

Answer. I don't know when it went. I presume it must have. It was in New York as quick as I. It went by the Pacific Mail, and I went by the opposition line to Central America, and it was there as quick as I was, I think.

177. Question. Did you know at the time of making it that you would probably reach New York as soon as the draft did?

Answer. I intended going on that Pacific Mail steamer, but arrived there just as she was backing out of the port, and I had to take the Nicaragua route.

178. Question. Did you find that the draft had reached New York when you got here?

Answer. I am under the impression that he told me it had reached there. We were wrecked on the coast, and when I went up from Atlantic City and made my appearance late in the afternoon when I got to New York, he was still in his office, and I think he informed me that day. He said very little, but I think he told me.

179. Question. Was there any occasion for you to notify Mr. Garth that you had drawn on him when you were going on the same steamer that the draft did?

Mr. KENNEDY. Objected to, as the question assumes as a matter of fact what does does not appear, to wit, that the draft on the Bank of Cal-

ifornia, which was not sent by the witness at all but which was delivered to Echeniqua & Co., to be forwarded by them, went on the same steamer as the witness.

Answer. In a strict business sense it ought to have been done, because if I had reached San Francisco as I expected, I would have been there as quickly as the letter.

180. Question. When you drew the draft, did you, or did you not, expect to get to San Francisco and New York as quickly as the draft did?

Answer. Yes. There is no doubt that I expected to go directly through. I knew this steamer would connect immediately with the other, the Mexican steamer.

181. Question. Did you have any trouble with General Bartholow as to the accounts of the company?

Mr. KENNEDY. I object to that on the ground that it is irrelevant.

Answer. Nothing that I could call trouble. He was complaining, ailing, and unable, as he said, to attend to matters of that sort, and was dilatory in giving me the information, and some was not given at all. What was afforded was simply a little memorandum on little pieces of paper.

182. Question. Did you afterwards find any discrepancy between the memorandum he gave you and the actual state of affairs?

Mr. KENNEDY. That is objected to that General Bartholow's conduct is not in issue here.

Answer. I had little or no statement of affairs given to me; it was what I picked up and found. The property was left as it was, and I had to go around and find it; it was there on the ground, in the warehouses, and in the mines, but there was no inventory given of anything.

183. Question. Was there any statement of debts given to you?

Answer. There was a little memorandum, I think.

Mr. KENNEDY. There is the same objection to all of these questions.

Answer (continuing). There were a few names on a piece of paper of workmen whose accounts had not been entered, so many hundred to this and so many hundred to that.

184. Question. How long had General Bartholow been ailing?

Answer. He was in the same condition; I felt it myself afterwards—the result of the fever, enervated. It would prostrate anybody.

185. Question. How much of this ore showing this gold in pin points was there taken from the El Cristo mine?

Answer. Very little. It was the occurrence of a day, as they were digging what they call a pozo, or sinking a shaft, in other words. Digging down, they came into this gold-bearing earth.

186. Question. About how much was there; more than a handful?

Answer. I could not tell; I did not see more than a handful, for they only brought me that specimen and said it had given out; they brought me one piece down.

187. Question. You said that an estimate of the cost of tunneling the La Abra mine had been given to you by somebody?

Answer. It was by General Bartholow. We had a conversation.

188. Question. And he thought it would cost—

Answer. About $14,000 or $15,000, somewhere along there.

189. Question. Why didn't you engage in that work?

Answer. That is what I wrote to Mr. Garth, that I desired the owner should come and project his own work. There was work already in prog-

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ress and I did not care to depart. It may have been said that I was leaving a proper field and going on an experiment.

190. Question. In your direct examination you testified that you had no trouble with the civil authorities or the military, other than with respect to this Prestamo. Did you have occasion to see much of the civil authorities?

Answer. No; not at all; very little.

191. Question. Did you have any dealings with them in reference to the extensions of time?

Answer. Yes; I wrote to them. I never saw them. I simply sent a letter and a reply would come.

192. Question. The letter book shows applications for prorogas or extensions of time in which to work the mines. Why were those applications necessary?

Answer. Because we did not want to work them all at the same time. We reduced the force and the labor, and we did not want to lose possession of them, and only by asking and receiving authority could you still retain possession and not work them.

193. Question. Was that the Mexican law on the subject?

Answer. I believe so. I took it for granted. I followed the instructions given me there.

194. Question. By whom?

Answer. I don't know whether they had to apply for a new extension, whether it lapsed and you had to ask anew for it or not. My recollection is cloudy on that.

195. Question. How long under the Mexican law could a mine be left idle without losing title?

Answer. There is only a short interval. I would not pretend to say now.

196. Question. Did you ever have any trouble in getting these extensions?

Answer. I don't remember any. I think they were granted without any trouble.

197. Question. What were the authorities in the district in which your mines were situated called?

Answer. To tell the truth, I know very little about it. This old man, I believe, was called a judge, that man Soto. I do not know who held it before him. There was another one that I recollect of being there one day whose name I have forgotten, but I believe he was from San Dimas. San Dimas seemed to have jurisdiction over us. There was a man called gefe politico. I do not know the exact translation of that, political chief, I suppose. I don't know what would correspond with it.

198. Question. Did he exercise judicial powers or executive, as we understand them?

Answer. I could not tell you what the scope of his office was. I never came in contact with him except in that Valdespino Case, when he wrote me once.

199. Question. Was there an authority called a mining board; and if so, where was it situated?

Mr. KENNEDY. My objection is the same as before, that all of this is not in development of the cross-examination, but is really an introduction of new subjects that were not touched upon in the direct examination.

Answer. I could not answer you now.

200. Question. Do you know what the authorities were to whom you would have appealed in case the trouble you thought threatening had happened?

Answer. I can not say, and would only have known by advice. As a rule I relied upon myself for my protection, and for any further steps would have had to ask for advice.

201. Question. Did there seem to be any government of any sort prevailing there?

Answer. It was a wild mountain hamlet, on the mountain side, and we saw no authority—saw no exhibition of authority—from one year's end to the other.

202. Question. This man Soto, you say, was a justice of the peace?

Answer. I suppose he acted as the emergency arose. While I don't think he was kindly disposed to me he never harmed me in any way, except I thought (it was mere surmise) that he might have thought he would do better if he could have his own way, and have the money paid out in coin and come over his counter.

203. Question. You say that your mines were in the jurisdiction of San Dimas?

Answer. I think so. I don't know that the mines were in its jurisdiction, but there was a sort of authority, because when they spoke of anything like exercising authority they would refer to San Dimas. How far the authority went I don't know. I was never called upon to investigate it and never did.

204. Question. Did you ever go to Durango?

Answer. Yes; I was there once. Once I rode across the mountains on mule back with a man.

205. Question. Was that the seat of government of the State of Durango?

Answer. I think it is; yes, sir.

206. Question. What was the seat of government of the State of Sinaloa?

Answer. Culiacan.

207. Question. In which of those States was your hacienda situated?

Answer. Just within the borders of Durango, I think.

208. Question. How far was it to Durango?

Answer. I think four or five days' riding. I could not tell you in miles. They do not measure the distance by miles; they measure it by hours, or days, that it takes a mule to go from point to point.

209. Question. About the same distance it was from Mazatlan?

Answer. I think farther.

210. Question. And how far was it to Culiacan?

Answer. That I don't know. I never went there.

211. Question. How many Americans did you have there in your employ?

Answer. The number differed from time to time. I could not tell you how many. The first ones who were there were with General Bartholow, and they left almost in a body, and went to California very soon after he left.

212. Question. Did they give you any reason for leaving?

Answer. No. They did not want to stop. The rainy season was approaching and that was a good reason, and they simply said they wanted their time and their money.

213. Question. I notice a letter from you on the 6th of July, which is found on page 268 of the Senate report, giving a "list of names of persons at the La Abra works for whom letters from Europe or the United States may arrive: Alfred Bryant, J. Edgar, A. B. Elder, Dan Sullivan, James Collins, J. W. Green, J. Keeghan, Richard Honith, Charles E. Norton, Francisco Dominguez." Do you know what became of those men?

Answer. No; I do not. The only one I can answer for is Dominguez, and he died in the room with me. He died of consumption.

214. Question. Did they stay with you, any of them, during your superintendency?

Answer. Norton, for some time; Collins, Sullivan, Elder, Edgar, Bryant—he only stayed until we could get a certain portion of the machinery that required an expert machinist gathered up. He took the place of a man who went away. I got him from the town.

215. Question. Did you and your employees have any arms?

Answer. Every man had his six-shooter. He could not be there without it.

216. Question. Were there any military posts of the Mexican army in the vicinity?

Answer. None that I know of. I never saw any.

The further taking of this deposition is adjourned by consent to Saturday, July 7, 1894, at 11.30 a. m.

NEW YORK, *July* 7, 1894.

Present: Same counsel as before.

JULIUS A. DE LAGNEL resumed the stand.

By Mr. KENNEDY:

217. Question. What was the occasion or pretext of the armed demonstration that you described before the Senate committee?

Answer. It was because the port of Mazatlan was beleaguered by the Liberals; the French and Imperialists had possession, and General Corona or his subordinate would permit no passage to or from the city. There was no ready money at the mines, and I could not get to Mazatlan to get the money, and I wanted to pay these people in orders—promissory notes, so to speak—for a time, until that embargo should be removed. If I could have got to the port or city of Mazatlan there would have been no trouble, because I could have got the money, as it was in the hands of the bank there.

218. Question. Do you recollect whether you gave any account of that armed demonstration to Mr. Garth in any of your letters to him?

Answer. I could not say now without looking at the letter books. I can not give you an intelligent answer.

219. Question. What is your best impression as to whether you reported that occurrence to Mr. Garth or to the home office?

Answer. I have no recollection, but I should take it for granted that I did.

220. Question. You have testified that you wrote to Mr. Garth, giving him an account of the results of the assay that you and Mr. Elder made at La Puerta. Do you recollect receiving any answer from Mr. Garth in which that matter was mentioned?

Answer. I do, because it was a peculiar answer——

221. Question. Before you say anything about that let me ask you what you did with the letters you received from Mr. Garth on official business?

Answer. The whole of them were turned over to Mr. Exall.

222. Question. And you have never seen any of those letters since you left the mines?

Answer. No, sir.

223. Question. Now you may state what you were about to say.

Answer. Mr. Garth called my attention to the possibility of such a thing as "salting," which was something I knew nothing about at that time—what he called salting the mines.

224. Question. Did he say who had made that suggestion to him?

Answer. No.

225. Question. Had any of the workmen or other employees returned from the mines at about that time to New York?

Answer. The workmen had all left and General Bartholow had left.

226. Question. Had Cullins, the miner, left?

Answer. No; he left later on. He went to New York, and he returned again. Mr. Garth sent him back. He had parted with me finally, as we supposed, but Mr. Garth sent him back again to act as head miner.

227. Question. What time did he first leave the mines?

Answer. I could not tell you.

228. Question. Do you remember what reply you made to Mr. Garth's suggestion that perhaps the ore that you had assayed at La Puerta had been salted?

(Objected to, as there is a letter in the letter-press book on that subject.)

Answer. I do not remember.

229. Question. Who furnished you the ore that was used in the La Puerta assay?

Answer. I. V. Hardy, personally.

230. Question. Who was he?

Answer. He was the man in charge of the business when I arrived there. He had active charge of the store.

231. Question. Had he anything to do with the mining?

Answer. I can not tell what the subdivision of duties was. He had nothing to do with the direction of the miners after I took charge, but he had all the business in his hands—the books and everything else—until the time he went away.

232. Question. What instructions, if any, did you give Mr. Hardy in regard to the specimen of ore for this assay?

Answer. I simply asked him to have it crushed for me and give it to me.

233. Question. You did not tell him from what pile to take it?

Answer. My impression is that I told him to take it from the La Luz mine.

234. Question. Have you any reason to believe that he did not do what you instructed him to do?

Answer. I never should have believed it except for that letter.

235. Question. What was the general character of the ores extracted by the company, as to whether they were "rebellious" or not?

Answer. You are asking me a question that I am not competent to answer. I am not familiar with ores, and was not then. I know this much, however, that the two ores from the La Luz and from the El Cristo mines were entirely different; the one contained the ore in a reddish earth and the other was a grayish ore, and contained in the quartz.

236. Question. Was there not more of free gold in one than in the other?

Answer. I thought there was more free gold in the El Cristo than in the La Luz.

236½. Question. Is it not a fact that it is much more difficult to obtain gold or silver from so-called "rebellious" ores than from free ores?

Answer. Yes. The La Luz mine contained sulphurettes, as they term them—little dark granulations or fine dust.

237. Question. Was there any apparatus for roasting at the company's works in use when you left?

Answer. No, sir.

238. Question. Why?

Answer. Because it had not been built.

239. Question. Was there any machinery for that purpose?

Answer. It did not require machinery. It only required a furnace to roast the ore, and then after it was roasted they could treat it the same as free ore.

240. Question. What was the reason, when it was known that the ores were "rebellious," that the proper apparatus for treating them was not provided?

Answer. That I can not say.

241. Question. Returning to the armed demonstration, where were the men massed?

Answer. In the storehouse, where the goods were, between the warehouse and the store where a small supply was exhibited, and where they always appeared before the counter for payment.

242. Question. Did the man that seemed to be the ringleader advance and have any conversation with you?

Answer. He did not say a word to me. I should not have known there was any trouble but for a clerk there named Sains, a Mexican. I heard the men talking in a low tone, but I did not know what it was about, and this Mr. Sains said to me: "If you are going to do anything you had better do it quickly, because this man is talking very ugly and is inciting these men to make an attack upon you."

243. Question. Were any of your miners that morning in the wine shop?

Answer. I could not say where they had been. They were all sober when I called them.

244. Question. So that on this occasion drink did not seem to be the exciting cause of the demonstration?

Answer. No, sir; the workmen who came up armed were all sober; every man was perfectly sober.

245. Question. Have you any recollection when you first informed Mr. Garth that you would not remain at the mines after the close of the year for which you were engaged?

Answer. No, sir.

246. Question. In your redirect examination, on page 9, referring to the officers of the company in New York, you say: "They knew that the year would expire on a certain day. I had long before told them that I would not remain, though solicited to do so." Does that refresh your recollection as to the time of your arriving or returning?

Answer. No, sir; I do not recall when it was.

By Mr. LINES:

247. Question. About what time was this demonstration by the workmen?

Answer. While not recollecting accurately, I should think it was somewhere in the early fall of 1866.

248. Question. About how soon after that demonstration were you able to go to Mazatlan?

Answer. I could not tell you. Where everything is a blank it is useless to guess.

249. Question. You have stated that according to your best recollection you reported the results of the assay made at La Puerta. Can you tell whether you made that report from Tayoltita or from Mazatlan?

Answer. No, sir.

By Mr. KENNEDY:

250. Question. On your cross-examination I asked you the same question, in substance, and you said that you made the report after you returned to Tayoltita, and that you had the copy book convenient. Have you any doubt now as to the fact where you made that report from?

Answer. I can not tell you as to what occasions the doubt; I am simply answering as things come to my mind now. That I made the report I know, and you pin me down to whether I wrote it on a pine desk or on a mahogany desk.

251. Question. I am pinning you down to whether you wrote it at Tayoltita or at Mazatlan.

Answer. I would not pretend to say. I made it as a matter of course. The mails were about every thirty days, and it is possible I may have written it from Mazatlan, but I can not say at this late date; but the all-important point I am satisfied of.

252. Question. Suppose you had made the report in writing at Mazatlan, what would you have done in regard to preserving a copy of it?

Answer. I would have taken a copy of the letter and pasted it in the book upon my return, and if I had made it at Tayoltita it would have gone into the book at once.

JULIUS A. DE LAGNEL.

Stipulation as to taking testimony.

It is hereby stipulated by counsel for the United States and for La Abra Silver Mining Company that testimony may be taken, on behalf of the complainant, by oral examination before any commissioner of the Court

of Claims in California, or any consul of the United States in Mexico, and upon a transcript of the same being furnished to the above-named defendant the witnesses so testifying may be by him cross-examined on written interrogatories to be propounded to said witnesses by the said commissioner or consul, as the case may be, such testimony so taken to be subject to any objection on either side at the trial.

ROBERT B. LINES,
Special Assistant to the Attorney-General.
CRAMMOND KENNEDY,
Of counsel for La Abra Silver Mining Co.

WASHINGTON, D. C., *August* 30, 1894.

Deposition of Frederick Sundell, for complainant, taken at San Francisco on the 2d day of October, A. D. 1894.

Complainant's counsel, Robert B. Lines, special assistant to Attorney-General; respondents' counsel, none.

By Mr. LINES:

1. Question. Mr. Sundell, please state your age, residence, and occupation.

Answer. My name is Frederick Sundell; age, 56; residence, Alameda, Cal.; and occupation, mining engineer.

2. Question. Where did you reside from 1865 to the end of 1868?

Answer. San Dimas.

3. Question. Where is that?

Answer. In the State of Durango, Republic of Mexico.

4. Question. What was your occupation?

Answer. Assayer.

5. Question. With what company, if any, were you connected?

Answer. The Durango Silver Mining Company.

6. Question. Were you familiar with the mineral district of Tayoltita, in the vicinity of San Dimas?

Answer. Yes, sir.

7. Question. Did you ever make a deposition on behalf of the Government of Mexico, to be used in its controversy respecting La Abra Silver Mining Company?

Answer. Yes, sir; I did.

8. Question. In what year?

Answer. In 1877.

9. Question. In what month?

Answer. August.

10. Question. Please look at the paper I now hand you, and state whether or not that is the deposition which you made in August, 1877.

Answer. Yes, sir; that is the one.

11. Question. That is the deposition?

Answer. Yes, sir.

12. Question. In what language is that deposition?

Answer. Spanish.

13. Question. Are you familiar with the Spanish language?

Answer. Yes, sir.

14. Question. Have you ever seen a translation of that deposition into the English language?

Answer. Yes, sir; I have.

15. Question. Have you compared the original with the translation in order to ascertain whether it was correctly translated?

Answer. Yes, sir; I have compared it, but found a few errors in the English.

16. Question. Please look at the document which I now hand you, being the bill in equity of United States *v.* La Abra Silver Mining Company *et al.*, and state whether you have compared your original deposition with the printed copy purporting to be a translation of your deposition appearing on pages 332 to 340 of the exhibits to the bill.

Answer. Yes, sir.

17. Question. State, Mr. Sundell, what errors, if any, you found in the English translation of your deposition as it appears between those pages.

Answer. On page 334, in the answer to the second point of the interrogatories, it is stated that I was at Mazatlan from 1865 to the end of 1868.

18. Question. How did you give your testimony in the original?

Answer. I stated that I lived in San Dimas without interruption the whole time in the years referred to.

19. Question. That is from 1865 to 1868?

Answer. That is from 1865 to 1868.

20. Question. Are there any other errors in your deposition as it is in the exhibit to the bill?

Answer. To the fourth point of the interrogatories in the translation, it says: "Visited several times the Tayoltita mines," whereas in the original I stated the mineral district of Tayoltita. To the sixth point of the interrogatories, on page 334, I am made to say, "I never visited the mines or works of La Abra Company," and I stated that I never visited the mines or the workings in the mines.

21. Question. Are those all the errors that you have discovered in the translation as it appears in the exhibits to the bill?

Answer. Yes, sir; that is all.

22. Question. With those exceptions, then, the document, appearing on pages 332 to 340 in the exhibits to the bill, embodies a correct translation of the deposition given by you in the month of August, 1877?

Answer. Yes, sir.

23. Question. How did you happen to give two sets of answers to the same interrogatories when you gave your deposition in 1877?

Answer. Well, first a set of questions was presented to me in English, and I answered the same questions also in English in writing.

24. Question. On what date was it?

Answer. The same date, the 9th of August. Then the promotor fiscal afterwards interrogated me verbally, and I answered his questions in Spanish and they were written down by his secretary as they appear.

25. Question. Was the first set of answers as they appear in the deposition given first, or was the second set of answers given first?

Answer. The second set of answers was given first.

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26. Question. What is your nationality, Mr. Sundell?

Answer. Swedish.

27. Question. How long had you been in the Republic of Mexico in the year 1877?

Answer. Ten years, altogether; I was absent about two years.

28. Question. When did you first go to the Republic of Mexico?

Answer. In 1865.

29. Question. To San Dimas?

Answer. To San Dimas.

30. Question. Where did you learn assaying, Mr. Sundell?

Answer. In my own country, Sweden.

31. Question. At what?

Answer. At the mining school.

32. Question. And how long had you been an assayer when you went to Mexico?

Answer. I had not practiced assaying before I came there.

33. Question. How long a course of instructions had you taken in the mining school in Sweden?

Answer. Three years.

34. Question. You said, I believe, that you were two years absent from Mexico?

Answer. Yes, sir.

35. Question. Between 1865 and 1877?

Answer. Yes, sir.

36. Question. During what years were you absent?

Answer. 1869 and 1870.

37. Question. Did you, in fact, in 1865 to the end of 1868, visit the mines of La Abra Silver Mining Company at Tayoltita?

Answer. No; I did not visit the mines.

38. Question. Did you visit the hacienda?

Answer. Yes, sir.

39. Question. Did you see the reduction works of La Abra Mining Company?

Answer. Yes, sir; I did.

40. Question. About how often between those two years?

Answer. Several times, but I could not say exactly.

41. Question. What was the distance from San Dimas to Tayoltita?

Answer. It took from two to three hours' ride to get over there.

42. Question. About what was the estimated distance?

Answer. About 4 to 5 miles.

43. Question. Why did it take so long to ride 4 to 5 miles?

Answer. Because I had to climb a mountain 3,000 feet and go down again about 4,000 feet.

44. Question. Were you familiar during your stay in Mexico with the laws and regulations governing the working of mines at that time?

Answer. Yes, sir.

45. Question. What was the headquarters of the mining district or department in which Tayoltita was situated?

Answer. Do you mean during that time?

46. Question. Yes.

Answer. First it was Gavilanes, and afterwards changed to San Dimas.

47. Question. About when was it removed to San Dimas?

Answer. I think in 1866. We had no government at that time.

48. Question. Was there a mining board in existence at San Dimas?

Answer. No; never was any board.

49. Question. Who was the official of the Mexican Government at the head of the mining district?

Answer. The gefe-politico, or prefect of the district, appointed by the governor of the State of Durango.

50. Question. What authority did he exercise over the mines and works of his district? Was it or not similar to the authority of a mining board?

Answer. I do not know if they have any mining board now down there. His authority was to receive denouncements of mines, and give possession of the same.

51. Question. What do you mean by "denouncements"?

Answer. Where a mine is abandoned you present a petition to get the mine as your own, in your possession.

52. Question. Abandoned how long?

Answer. At that time it was from six months to a year.

53. Question. What do you mean by "abandonment"?

Answer. When the mine is not worked, and has no recognized owner.

54. Question. Could, or not, a person retain the ownership of a mine without working it for a certain period?

Answer. He could stop for six months and work again, and it was his own.

55. Question. Was there any way by which the time of stoppage of work could be extended so as to preserve the ownership of the mine?

Answer. Yes, sir.

56. Question. In what way?

Answer. By presenting a petition to the gefe-politico showing cause why the mine could not be worked.

57. Question. And what would the gefe-politico then do?

Answer. He could grant the permission not to work.

58. Question. For how long?

Answer. For a year.

59. Question. What are those extensions called?

Answer. Amparos.

60. Question. Do you know what a proroga was?

Answer. I understood the same as an amparo.

61. Question. Did you know, during your stay at San Dimas, from 1865 to 1868, the officers of La Abra Mining Company at Tayoltita?

Answer. Yes; except the first superintendent.

62. Question. What was his name?

Answer. I think Bartholow.

63. Question. Who were the other superintendents with whom you were acquainted?

Answer. Julian A. de Lagnel, Charles Exall, and James Granger.

64. Question. In what order were they superintendents?

Answer. In that order named.

65. Question. Did they, or any of them, visit San Dimas frequently?

Answer. Yes, sir; frequently they visited San Dimas.

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66. Question. Did you see them when they came to San Dimas?

Answer. Yes, sir; most all the time.

67. Question. What were the relations between the officials of your company at San Dimas and those of La Abra Company at Tayoltita?

Answer. Always friendly.

68. Question. Did you have any business relations with them?

Answer. Our superintendent had.

69. Question. Who was your superintendent at that time?

Answer. Joseph G. Rice.

70. Question. In the translation of your deposition appended to the bill in this case, and particularly in the answers to the twenty-first and twenty-third interrogatories, on page 339, the name of the superintendent of the Durango Silver Mining Company is printed "Reed." Please look at the original deposition given by you, and state whether it so appears in the original.

Answer. It appears in the original "Ried," but his name should be "Rice."

71. Question. Where is Mr. Rice, Mr. Sundell?

Answer. Dead.

72. Question. Do you remember when he died?

Answer. I think in 1871.

73. Question. When did he leave Mexico?

Answer. In 1868.

74. Question. What month?

Answer. January.

75. Question. How did he go from San Dimas?

Answer. On horseback to Mazatlan, and by steamer from Mazatlan to San Francisco.

76. Question. Do you remember seeing Mr. Exall, the superintendent of La Abra Mining Company, at San Dimas about the time that Mr. Rice left?

Answer. No; not particularly.

77. Question. Did you or not say in your deposition in 1877 that you remembered having seen Mr. Exall at that time?

Answer. I remembered it at the time I gave my deposition, but of course I do not remember now.

78. Question. Did you or not then say so?

Answer. Yes, sir; I said so in answer to the twenty-third point.

79. Question. Do you remember, Mr. Sundell, Mr. Exall at any time about the month of January, 1868, speaking of an intention to leave La Abra Company's mines for New York to consult with the company?

Answer. I knew that he was going, there was no secrecy about it, but any particular day I do not remember.

80. Question. Did you or not in your deposition in 1877 state that Exall spoke of such intention?

Answer. Yes, sir.

81. Question. Have you now any doubt that when you gave your deposition in 1877 you remembered the facts to which you testified?

Answer. None whatever.

82. Question. Do you remember about what time Mr. Exall in fact left the mines of La Abra Company at Tayoltita?

Answer. In 1868.

83. Question. About what time in 1868?

Answer. February.

84. Question. Is there any particular circumstance that recalls that date to your memory?

Answer. Well, translating his power to Mr. James Granger.

85. Question. Did you visit Tayoltita after Mr. Rice left San Dimas and before Mr. Exall left Tayoltita?

Answer. I think not.

86. Question. Did you see Mr. Exall at San Dimas, or elsewhere, after Mr. Rice left San Dimas?

Answer. Well, I think I saw him once.

87. Question. Did you have any conversation with Mr. Exall about his leaving Tayoltita?

Answer. Well, in a general way.

88. Question. Was there any particular circumstance assigned by Mr. Exall in that conversation as a reason for his leaving Tayoltita, or any condition of affairs at Tayoltita?

Answer. Well, the reason why he left was because the mine did not pay and he had nothing to do. The mine did not pay to work, and the company would not furnish him any more money.

89. Question. Was that the reason assigned by him?

Answer. It was the general understanding.

90. Question. Understanding among whom?

Answer. Among us, that knew about the affairs.

91. Question. Among Americans or Mexicans?

Answer. Well, among Americans and Mexicans also.

92. Question. Was it or not a matter of common report and rumor that such was the condition of affairs?

Answer. Certainly, it was common report and rumor.

93. Question. In your visits to Tayoltita, to the hacienda and reduction works, what did you yourself see of the operations of La Abra Mining Company?

Answer. Well, I saw they had built a house and a very good stamp mill, and also a lot of ore lying in the yard.

94. Question. What was the character of the house?

Answer. The house was a common adobe house.

95. Question. Was it well constructed, or otherwise?

Answer. It was well put up, but the adobe was of poor material.

96. Question. In what condition was the house at the various times when you saw it?

Answer. First, I found the house in very good condition, and as years rolled on there was nothing left of it; the rain washed it down.

97. Question. In what condition was the house in January or February, 1868, or when you last saw it before that time?

Answer. It was still in good condition.

98. Question. Was there any other building erected by La Abra Company other than the house and the stamp mill?

Answer. No, sir.

99. Question. What use did they make of the house?

Answer. Living rooms and storerooms.

100. Question. What did they do with the storerooms?
Answer. They kept materials necessary for the mine.
101. Question. Did they carry on any business aside from the mine?
Answer. Except merchandising with the laborers, nothing else.
102. Question. Did you ever see the reduction works of La Abra Company in operation?
Answer. No, sir.
103. Question. Do you know of their ever having been in operation?
Answer. Yes, sir.
104. Question. How did you know that, Mr. Sundell?
Answer. Because Mr. De Lagnel came over to our place with some silver that he declared came out from the mill.
105. Question. About how much was there of it?
Answer. He brought about 13 pounds of bullion.
106. Question. What was its condition?
Answer. A very low alloy.
107. Question. About what proportion of pure silver was there in this 13 pounds?
Answer. About two-thirds.
108. Question. What was the rest?
Answer. Copper and iron.
109. Question. What, if anything, did you do with this bullion?
Answer. I refined it for him.
110. Question. And what was the result of your refining?
Answer. Nine pounds of pure silver.
111. Question. Do you know what became of that bullion after you refined it?
Answer. Mr. De Lagnel reported that he was going to take it home to his company.
112. Question. Did you ever hear of the stamp mill being in operation after that time?
Answer. Yes, sir.
113. Question. Under whose superintendence?
Answer. Mr. Exall's.
114. Question. About what time was that, Mr. Sundell?
Answer. In 1867.
115. Question. Did you see any of the results of that operation of the mill?
Answer. I never did.
116. Question. Did Mr. Exall say anything to you about results?
Answer. Not that I remember.
117. Question. After this last reduction or operation of the stamps that you have spoken of, did you hear of any other operation carried on by La Abra Company?
Answer. Do you mean after Mr. Exall had run the mill?
118. Question. Yes, sir.
Answer. No, sir.
119. Question. What was the condition of things at the hacienda of La Abra Company when you last visited it before Mr. Exall left.
Answer. It was in good condition.
120. Question. Were there any operations going on?

Answer. No, sir.

121. Question. Was there any merchandising going on?

Answer. Selling off the supplies and merchandise they had on hand.

122. Question. What was the character of the stamp mill with respect to economy and convenient operation?

Answer. The mill was the best that could be had at that time in California.

123. Question. But, as erected by the company at Tayoltita, was it judiciously located and constructed?

Answer. Yes, sir; it was.

124. Question. What was the character of the ore which you saw at the hacienda of La Abra Company?

Answer. What do you mean by the character of the ore? Do you mean free-milling ore or lead ore?

125. Question. What was the general character and value, so far as you could judge?

Answer. Do you mean the general character and the value of the ore?

126. Question. Was it good or poor?

Answer. The general value could not be ascertained by the sight of it, only by assay; but from the looks of it it looked poor.

127. Question. Did it not look so that it would pay to beneficiate?

Answer. It would not pay to beneficiate and pay all expenses.

128. Question. The expense of beneficiating or mining?

Answer. Neither of them.

129. Question. Did you ever make any assay of any of those ores, Mr. Sundell?

Answer. Not particularly of those.

130. Question. Was there anybody of La Abra Company capable of making assays of ore?

Answer. Yes, sir; Mr. Elder.

131. Question. Was he the only person who was a competent assayer?

Answer. What time do you mean?

132. Question. I am speaking of the time from 1865 to 1868, and particularly in the summer of 1867.

Answer. During 1867 I think there was no one except Mr. Elder.

133. Question. Were Mr. De Lagnel or Mr. Exall competent assayers?

Answer. No, sir; not what you would call competent assayers. De Lagnel knew how to make silver assays of this ore, I think.

134. Question. Were there any assays of La Abra Company's ore at your establishment in San Dimas?

Answer. No, sir.

135. Question. About how much of this ore, as near as you could judge, did you see when you last visited Tayoltita?

Answer. Do you mean during those years?

136. Question. Yes.

Answer. From 300 to 500 tons.

137. Question. Did you visit Tayoltita after Mr. Exall left?

Answer. Yes, sir; in 1871 and several times after.

138. Question. Did you notice any change in the appearance of the piles of ore?

Answer. No, sir; about the same.

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139. Question. When did you last visit Tayoltita, the hacienda of La Abra Company?

Answer. Do you mean the very last year?

140. Question. Yes.

Answer. The very last year was 1890.

141. Question. Were the ores which you had seen before Mr. Exall's departure still there at the hacienda in 1890?

Answer. It was all thrown away at that time.

142. Question. What was all thrown away?

Answer. The rock that was in the yard.

143. Question. Thrown away where?

Answer. In the river.

144. Question. You were in pretty constant communication with the officers and people at Tayoltita, were you?

Answer. Yes, sir.

145. Question. Did you ever hear of any of the ores of La Abra Company being carried off by Mexicans?

Answer. Never.

146. Question. Do you think that could have been done to any great extent without your hearing of it?

Answer. No, it could not.

147. Question. Were you acquainted with the Gefes-Politico Morcus Mora, Macario Olvera——

Answer. I knew them all.

148. Question. What were their relations, so far as you know, with Mr. Exall, the superintendent of La Abra Mining Company?

Answer. So far as I knew they were of a friendly nature.

149. Question. Did you ever hear of any trouble between them and Mr. Exall?

Answer. Never.

150. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. Impossible.

151. Question. Did your company ever have any trouble with those officials?

Answer. No, sir; never.

152. Question. Did you know Guadalupe Soto?

Answer. Yes, sir; I knew him.

153. Question. What was his position?

Answer. Occupation, do you mean?

154. Question. Yes; his occupation.

Answer. Storekeeper.

155. Question. Did he hold any official position?

Answer. In Tayoltita?

156. Question. At Tayoltita.

Answer. I don't remember; he might have been justice of the peace.

157. Question. What were the relations between him and Exall?

Answer. I never heard anything particular except good relations.

158. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. No, sir.

159. Question. How did the Durango Mining Company transport its supplies to its mines?

Answer. By mule trains.

160. Question. Pack mules, I suppose?

Answer. Yes, sir.

161. Question. Did the company own its mules?

Answer. Not the pack mules.

162. Question. How did they get their supplies transported by these pack mules?

Answer. By having mule drivers.

163. Question. Were there any contractors owning a number of these mules?

Answer. No, sir; not particularly.

164. Question. Do you know how La Abra Company transported its supplies?

Answer. The same as our company, by pack trains, pack mules.

165. Question. Do you know whether La Abra Company owned any mules of its own?

Answer. No, sir; they never owned any pack mules.

166. Question. About how many mules did they own, if any?

Answer. I do not know, but I should think from 8 to 10 riding mules, used by the superintendent and other employees.

167. Question. Did you ever hear of any mule trains belonging to or in the employ of La Abra Company being taken by the military forces of the Liberal army?

Answer. Not during my time, when I was there.

168. Question. Could there have been any such seizure without your knowing it?

Answer. No. I understood there was some little trouble before I came there, but they never lost anything. They only borrowed the mule trains and brought them back again, but I could not say anything about it.

169. Question. Did you know of the robbery of a man named Scott, or Scotty, in the employ of La Abra Company?

Answer. No; I never knew.

170. Question. Did you hear of a man named Grove being murdered, or robbed and murdered?

Answer. Yes; I heard about that.

171. Question. Do you know what was the result of that murder; whether there were any steps taken to apprehend his murderer?

Answer. I never heard.

172. Question. Did you ever hear of an attack being made by armed Mexicans upon the hacienda of La Abra Company?

Answer. No, sir; I never heard.

173. Question. Could such an attack have taken place without your hearing of it?

Answer. No, sir.

174. Question. During your visits to Tayoltita in 1867, after the reduction of ores by Exall, of which you have spoken, were there any miners or laborers or other people employed by La Abra Company at Tayoltita?

Answer. I think not.

175. Question. About how many people were there at that time?

Answer. I could not tell.

176. Question. Were there as many as a hundred?

Answer. Do you mean occupied in the mines or living around there?

177. Question. I mean occupied in any business, or living about there.

Answer. No, sir; I think not.

178. Question. Was there any other company in business at Tayoltita—any other operations than those of La Abra Company?

Answer. Not that I know of.

179. Question. Did you know Judge Nicanor Perez at Tayoltita?

Answer. Yes; I knew him.

180. Question. Did you ever hear of any trouble between him and Mr. Exall in the latter part of 1867 or the first part of 1868?

Answer. Yes, sir; Exall told me about it.

181. Question. Well, what did Exall tell you about it?

Answer. Exall came over to San Dimas and told me he had some trouble with Nicanor Perez, because Nicanor Perez wanted to go in the storeroom where Exall was, and Exall got him out of the storeroom and Nicanor Perez got offended. If I remember right, he arrested Exall for a few hours.

182. Question. How soon after this occurrence was it that Exall told you about it?

Answer. The next day Exall got out.

183. Question. Was Exall imprisoned after he told you about his short imprisonment?

Answer. No, sir; he never was.

184. Question. Do you know whether he took any steps to complain to higher authorities of Nicanor Perez's action?

Answer. I do not.

185. Question. Was Mr. Rice still at San Dimas at this time?

Answer. I do not remember.

186. Question. Did you ever hear of any further trouble between Exall and Judge Perez?

Answer. Never.

187. Question. Now, when you visited Tayoltita, after Exall's departure, did you find anybody in charge?

Answer. No, sir.

188. Question. You spoke of Mr. Granger as a superintendent of La Abra Company; where was he?

Answer. Sometimes he lived in Tayoltita and sometimes he lived in San Dimas.

189. Question. About how soon after Exall's departure did he come to San Dimas?

Answer. Very soon.

190. Question. Did you see him frequently in San Dimas?

Answer. Yes, sir.

191. Question. How much of a place was San Dimas at that time?

Answer. At that time, 500 people.

192. Question. Did you know what, if anything, Granger did with the property of the company at Tayoltita?

Answer. He sold what he could sell.

193. Question. Did your company purchase anything of him?

Answer. Not that I remember.

194. Question. Do you know of others who did?

Answer. He sold the goods in the store by the yard or pound to any one that came around—kind of retail arrangement—as long as it lasted.

195. Question. When Granger came to San Dimas from Tayoltita, did you see any books in his possession?

Answer. No, sir.

196. Question. Did you ever see any books in his possession at San Dimas?

Answer. Yes, sir; I saw one book.

197. Question. What was the character of that book?

Answer. It was a letter-copying book.

198. Question. Do you know whether he brought that from the company's place at Tayoltita?

Answer. No; not to my particular knowledge, except that he said what the book was.

199. Question. What did he say that it was?

Answer. He said it was a letterpress copy book of the company.

200. Question. About how long after he came to San Dimas was this that you saw this book in his possession?

Answer. That was several years.

201. Question. Did he live at Tayoltita when Exall left?

Answer. Yes, sir; he lived some time after Exall left.

202. Question. Immediately after Exall left, or later?

Answer. Immediately after he left.

203. Question. Did he go back to Tayoltita after removing to San Dimas?

Answer. Not to live.

204. Question. Now, when he did live in Tayoltita, where did he live?

Answer. He lived at the company's house.

205. Question. Do you know where Guadalupe Soto lived at Tayoltita?

Answer. He lived on the other side of the road, right opposite the hacienda.

206. Question. Do you know anything of a small reduction works distinct from and at some distance from the stamp mill of La Abra Company which was situated on property claimed by the company?

Answer. Yes; the Guadalupe hacienda.

207. Question. Do you know of any time that, during Exall's stay or after he left, this hacienda was occupied by Judge Soto?

Answer. I don't know.

208. Question. How far was it from the stamp mill?

Answer. About 500 feet below.

209. Question. You have stated that the prefects Mora and Olvera lived at San Dimas, and that their relations with Exall were friendly so far as you know. Do you know of any particular instances of friendship between Exall and either of those prefects?

Answer. No; I do not remember of any particular occasion.

210. Question. Did you see the prefects frequently?

Answer. Yes, sir.

211. Question. Talk with them frequently?

Answer. Yes, sir.

212. Question. Did you ever hear either of them express any hostility to La Abra Mining Company?

Answer. No, sir; none of those prefects.

213. Question. Or any intention to drive La Abra Mining Company out of the country?

Answer. No, sir.

214. Question. Did you know one Juan Nepomuceno Manjarez?

Answer. Yes, sir; I knew him well.

215. Question. What was his character?

Answer. Very good character, indeed.

216. Question. Do you know whether he was ever in the employ of La Abra Mining Company?

Answer. No, sir; he was never employed by them; only he might have hired some mules to them, but never in their pay.

217. Question. Was he or not a man of means for that country?

Answer. He was considered pretty well off for that country.

218. Question. Did you know about Bartolo Rodriguez?

Answer. Yes, sir; I knew him, also, well.

219. Question. What was his character?

Answer. Very good; above the average of a Mexican in his station of life.

220. Question. Was he ever in your service or the service of your company?

Answer. Yes, sir; after he left La Abra.

221. Question. Did you know Patricio Camacho?

Answer. I must have known him, but I do not remember now.

222. Question. When Exall left Tayoltita who besides Granger remained there of Americans or foreigners in the employ of the company?

Answer. Mr. Sloan remained some time.

223. Question. Do you know how long he remained?

Answer. No; but it could not have been a long time.

224. Question. About how long did Granger remain in Tayoltita after Exall's departure and after he came to San Dimas?

Answer. I do not remember exactly.

225. Question. During the time he did remain there, did you ever hear any attempt of Mexicans to get possession of the mines and property of La Abra Company?

Answer. No, sir.

226. Question. Could such a thing happen without your hearing of it?

Answer. Well, some denouncement of the mine might have escaped me.

227. Question. I do not mean that, but I meant getting possession by force.

Answer. No, sir.

228. Question. You have spoken of Granger as superintendent of the company, and of the power left to him by Exall, the preceding superintendent, of which you said you made a translation. When did you first see that power?

Answer. Very soon after Exall left.

229. Question. And when did you make the translation that you have referred to?

Answer. I made one soon after Exall left, and I made another which was legalized in 1873.

230. Question. Please look at the document in Spanish, embodied in the deposition that you made in 1877, numbered sheet 11 of that deposition, and state in whose handwriting it is, and what the document is.

Answer. It is in my own handwriting, a translation from English into Spanish of the letter I have referred to, from Charles Exall to James Granger, transferring his power as superintendent to Granger.

231. Question. Under what circumstance and at whose request was that translation made?

Answer. Mr. Granger's request.

232. Question. And for what purpose?

Answer. For the purpose that Mr. Granger could have the document to show that he had authority to have charge of La Abra Company's property.

233. Question. Show to whom?

Answer. To whom it may concern.

234. Question. Please unfasten the fastenings of this deposition and take out the paper which is referred to.

(The witness unfastens the deposition and takes out the paper referred to.)

235. Question. Please compare that document and the indorsements with what purports to be a translation of them on page 337 of the exhibits to the bill in this case, commencing at the word "Copy" and ending at the word "Terrero," and state whether that is a correct retranslation of the document and translation of the indorsements.

Answer. In the Spanish translation the date is the 26th of February, and in the printed, in English, the date is the 21st of February; otherwise it is correct.

236. Question. Do you know in whose handwriting the indorsements are and by whom signed?

Answer. No; I do not know the handwriting.

237. Question. Do you know who Manuel Torrero is, by whom the indorsements purport to be signed?

Answer. I know him.

238. Question. Who was he?

Answer. He was judge of the first instance.

(The said document is now introduced in evidence on behalf of the complainant and marked "Exhibit No. 20, Frederick Sundell. James S. Manley, commissioner.")

239. Question. Please look at the document in Spanish, numbered sheet 10 of your deposition given in 1877, and state in whose handwriting it is and by whom signed.

Answer. I do not know the handwriting, but it is signed by James Granger.

240. Question. What is the Spanish for James?

Answer. Santiago.

241. Question. You are familiar with Mr. Granger's handwriting?

Answer. Yes, sir.

242. Question. Look at the indorsements, commencing immediately after the signature of Santiago Granger and running over and covering the whole of the back of the sheet, and state, if you know, in whose handwriting they are and by whom signed.

Answer. I do not know the handwriting of the indorsements or the signatures.

243. Question. Does your own signature appear upon the indorsements?

Answer. Yes, sir; it does.

244. Question. Who was Dionisio Gutierrez?

Answer. He was clerk of the court of the first instance.

245. Question. Please compare this document with what purports to be a translation of the same, commencing at the words "the undersigned," on page 336, and ending with the word "Torrero," on page 337 of the exhibits of the bill in this case, and state whether the printed translation is or is not a correct translation of the documents and indorsements.

Answer. I find the translation correct, except that in the original it says September 26 and in the English translation September 27.

(The said document is now introduced in evidence on behalf of the complainant and marked "Exhibit 21, Frederick Sundell. James S. Manley, commissioner.")

246. Question. Were you familiar with the handwriting of Charles H. Exall?

Answer. Yes, sir; I was.

247. Question. Did you have the original letter from him to Granger before you when you made the translation?

Answer. That is my impression.

248. Question. At the time you made this translation in accordance with the application of Granger to the judge and the judge's summons to you, was there anybody, to your knowledge, other than Granger claiming possession or control of La Abra Company's mines and property at Tayoltita?

Answer. Not to my knowledge.

249. Question. Where was Granger living at that time?

Answer. In San Dimas.

250. Question. About how long had he been living there, do you know?

Answer. I do not know exactly.

251. Question. Did you know of any person claiming the mines and property of that company after you made this translation in 1873?

Answer. I know afterwards that Constantin Ex denounced the hacienda for the purpose of utilizing some of the machinery in his own hacienda in San Vincente.

252. Question. Who was Constantin Ex, an American or Mexican?

Answer. An Austrian who, I believe, came to the country with Maximilian.

253. Question. Do you know what he did with the hacienda?

Answer. He took away what he wanted and left the balance.

254. Question. Were any of the mines denounced?

Answer. About the mine I can state that some of the mines were denounced several times by different parties, but were not worked continuously by any of them.

255. Question. Who was it that threw the ores in the river as you have testified?

Answer. Different parties occupying the hacienda.

256. Question. What was the reason for throwing it in the river?

Answer. For getting it out of the way.

257. Question. Did you ever hear of any Mexicans occupying the hacienda after 1873?

Answer. I understood after Granger left that several families occupied the houses, but I do not remember anyone in particular.

258. Question. I mean for the purpose of operating the mine or the reduction works.

Answer. Yes, sir; a man occupied the hacienda, put up a couple of pans to beneficiate ore.

259. Question. Who was he?

Answer. Somero.

260. Question. How long did he keep possession?

Answer. I do not remember?

261. Question. Do you know whether he ever abandoned it?

Answer. Certainly he abandoned it.

(An adjournment was here taken until Friday, October 5, 1894, at 2 o'clock p. m.)

FRIDAY, *October* 5, 1894, 2 *p. m.*

FREDERICK SUNDELL, recalled.

Mr. LINES:

262. Question. While you were in San Dimas, from 1865 to 1868, did you ever hear of the Neustra Señora Guadalupe Mining Company?

Answer. Yes, sir; I knew there was such a company existed in Tayoltita.

263. Question. How long did that company operate in Tayoltita?

Answer. I do not remember.

264. Question. Was that company in existence after Exall left?

Answer. Yes, sir.

265. Question. You stated the other day that there was no other company operating mines at Tayoltita after Exall left. Do you wish to correct that statement?

Answer. They did not operate the mine; they only existed there.

266. Question. Who were the officials of that company remaining at Tayoltita after Exall left?

Answer. I think one was Correll.

267. Question. What was his first name?

Answer. John.

268. Question. And what official was he?

Answer. Superintendent of the company.

269. Question. Do you know where he is now?

Answer. I do not.

270. Question. Do you know of any other superintendent of the company than Correll?

Answer. Yes, sir. I knew the one that succeeded Correll, but I do not remember his name; and afterwards a clerk by the name of Klein, that he had, was left in charge of the property.

271. Question. Do you remember his first name?

Answer. Andrew.

272. Question. Do you know where he is now?

Answer. No, I do not.

273. Question. How long did Mr. Correll remain there after Mr. Exall left?

Answer. I do not remember.

274. Question. Do you know how long Mr. Klein remained there?

Answer. He remained around San Dimas for several years.

275. Question. About when did the operations of the Nuestra Señora Guadalupe Company cease?

Answer. I do not remember the time.

276. Question. You have spoken of a Mr. Sloan as one of the employees of La Abra Company who was left by Exall. What was his first name?

Answer. I do not remember.

277. Question. Do you know where he is?

Answer. I do not.

278. Question. How long did he remain there after Exall left?

Answer. I do not remember.

279. Question. Have you ever seen what purported to be a copy of the testimony given for and against the claim of La Abra Silver Mining Company before the mixed commission of the United States and Mexico?

Answer. Yes, sir; I have seen that.

280. Question. When did you first see such a copy?

Answer. In 1888.

281. Question. Did you read the testimony at that time?

Answer. Only a part of it.

282. Question. About how much of it.

Answer. Perhaps one-third of it.

283. Question. Did you ever again see what purported to be a copy of that testimony before you testified on Tuesday last?

Answer. Yes, sir; but I did not read any of it.

284. Question. Have you read it since you testified on Tuesday last?

Answer. Yes, sir; the most part of it.

285. Question. You have spoken of seeing a book in Granger's possession which he told you was the letterpress copy book of La Abra Company. Did you ever examine that book or read any of the letters in it?

Answer. No, sir.

286. Question. Did you ever read, before you testified on Tuesday last, what purported to be a copy in print or otherwise of the letters found in that letterpress copy book?

Answer. No, sir.

287. Question. Have you read any of them since you testified on Tuesday last?

Answer. I read all them after I had testified.

288. Question. When you testified on Tuesday last about Exall's trouble with and arrest by Judge Nicanor Perez were you testifiying solely from your present recollection of that circumstance or had you ever seen or been told anything since the occurrence to refresh your memery about it?

Answer. I only testified from my present memory of the occurrence.

289. Question. Do you know of any other matter relating to the questions in controversy in this suit about which you can testify?

Answer. No, sir; I do not.

FREDK. SUNDELL.

Deposition of Frederick Sundell, for complainant, taken at San Francisco, Cal., on the 26th, 27th, and 28th days of November, A. D. 1894.

Cross-interrogatories by Mr. CRAMMOND KENNEDY:

1. Cross-question. In answer to question 42 in your direct examination you said that the estimated distance from San Dimas to Tayoltita was "about 4 to 5 miles." Did you mean measuring on a horizontal line? Or is the word "miles" a mistake for leagues?

2. Cross-question. You said, in answer to question 44 in your direct examination, that you were familiar during your stay in Mexico with the laws and regulations governing the working of mines at that time (1865–1877), and in answer to question 48 you said there never was any mining board at San Dimas. Where were the records of denouncements and other transactions affecting the titles to mines in the mineral district of San Dimas kept, and where and to whom would application need to be made during that time for copies of the deeds or records affecting such titles?

3. Cross-question. Did you have anything to do with the denouncement of El Rosario Mine by James Granger after La Abra Company ceased to work its mines at Tayoltita, or did you know anything about that denouncement at the time or subsequently? If so, please state what you know, and especially by whom or what authority Granger was put in possession of that mine.

4. Cross-question. In answer to question 61 in your direct examination you said that during your stay at San Dimas from 1865 to 1868 you knew the officers of La Abra Mining Company at Tayoltita, except the first superintendent. Where and how were you employed from the fall of 1865 to the spring of 1866, and what personal knowledge had you of the operations of General Bartholow or of La Abra Company during that time?

5. Cross-question. In answer to question 63 in your direct examination you said that the other superintendents with whom you were acquainted were Julian A. de Lagnel, Charles Exall, and James Granger. Why did you include James Granger among La Abra Company's superintendents?

6. Cross-question. In your deposition of August 9, 1877, as printed in the complainant's bill and exhibits, and as to which you were questioned in your direct examination, why did you say in answer to the fourth point that you did not know any other superintendents than Julian A. de Lagnel and Charles Exall, and why did you not mention James Granger as one of La Abra Company's superintendents in that deposition?

7. Cross-question. Under what authority did Granger claim to act in respect of La Abra Company's property or affairs at Tayoltita after Exall had left Mexico?

8. Cross-question. So far as you know did Granger ever apply to La Abra Company for permission to dispose of its property, or did he ever exhibit to you or to anybody else, so far as you know, any authorization from the company or any of its officers in New York to dispose of the company's property, or to act for or represent the company in any way at Tayoltita after Exall's departure in February or March, 1868?

9. Cross-question. Is it not a fact that as late as 1873 he relied upon Exall's letter of February 26, 1868, and produced it in court as his sole credential or authority to dispose of the company's property?

10. Cross-question. Did you ever see the original or what purported to be the original of Exall's letter of February 26, 1868, to Granger, and if so, when and where and in whose possession was it the first time you saw it, and when and where and how often did you see it afterwards? And do you know where it is now or what has become of it? Please answer as fully on these points as you can recollect.

11. Cross-question. On what kind of paper was that letter written, and did it show that it had been copied in a letterpress copy book?

12. Cross-question. In answer to questions 82 and 83 in your direct examination you said that Exall left the mines of La Abra Company at Tayoltita in February, 1868. Where were you on the 26th of February, 1868, and the following two weeks?

13. Cross-question. When and where did you last see Exall before he left?

14. Cross-question. Why did you fix the time of his departure from Tayoltita in February rather than in the early part of March, 1868? Have you any other reason than the date of Exall's letter of February 26, 1868, "translating his power" (as you say in your answer to question 84 of your direct examination) "to Mr. James Granger"?

15. Cross-question. Please look at Exall's letter to Granger, dated at Mazatlan, March 15, 1868, as printed on page 322 and 323 of the complainant's bill and exhibits in this case, and state, if you know, who was the Mr. "Rice" by whom Exall said in that letter he had written to Granger, and whether there was any person by the name of Rice other than Mr. Joseph Rice, then or late the superintendent of the Durango Mining Company, by whom Exall could have written at that time and place to Granger? If there was any such other person of that name, please state who he was, and how he came to be available for communication between Exall and Granger at that time.

16. Cross-question. Could or could not the journey from Tayoltita to Mazatlan, barring accidents, be made at that season (February or March, 1868) in three or four days on a good saddle mule?

17. Cross-question. Do you recollect whether Mr. Joseph Rice went to the city of Durango toward the close of 1867; and, if so, about how long he was absent from San Dimas on that visit?

18. Cross-question. Do you remember being told by Mr. Rice or by Mr. Exall, late in 1867 or early in 1868, that the local justice at Tayoltita, Guadaloupe Soto, had taken possession of La Abra Company's lower hacienda, known as "Guadaloupe," and had put a force of men at work on it against Exall's protest?

19. Cross-question. Did you know or were you informed at that time that Mr. Rice and Señor del Valle were requested by Exall to use their good offices at Durango city to stop those proceedings of Soto's? To refresh your recollection, if you do not recollect, please read Exall's letters of November 28 and December 5, 1867, to the Prefect Olvera, and Exall's letter of December 5, 1867, to Señor del Valle, as printed on pages 314 and 315 of the complainant's bill and exhibits in this case, and then state what you recollect hearing of those circumstances at the time, if anything.

20. Cross-question. You will notice that Exall says in his letter of December 5, 1867, to the Prefect Olvera, that he (Exall) "was in San Dimas yesterday." Do you recollect seeing Exall or hearing of those occurrences at or near that time?

21. Cross-question. What were your relations with Granger, and were they more or less intimate and friendly after Exall's departure than before?

22. Cross-question. In answer to question 98, in your direct examination, you said that there was no other building erected by La Abra Company than the house and stamp mill. Were the company's office, storerooms, and the superintendent's and clerks' quarters all under the same roof; and did not the company put up buildings, such as stables, blacksmith shops, and other outbuildings?

23. Cross-question. Please state your best recollection of the size of the company's "house."

24. Cross-question. You said in your direct examination, in answer to question 102, that you never saw the company's reduction works in operation, but that you knew that they had been operated. How many times, if any, were you at the company's hacienda between March 18, 1867, and March 1, 1868; and what process of reduction did the company use? Do you know whether they roasted the ores?

25. Cross-question. When you said, in answer to question 110, that the result of your refining some 14 pounds of bullion for De Lagnel was 9 pounds of pure silver, were you testifying from memory or from some memorandum, and did you mean 9 pounds avoirdupois or troy? If you were testifying from a memorandum, please hand it to the commissioner, so that he may mark it for identification and attach it to your deposition.

26. Cross-question. About how much was silver worth an ounce at that time?

27. Cross-question. You spoke, in your answer to question 119 in your direct examination, of the condition of things at the hacienda of La Abra Company "when you last visited it before Mr. Exall left." When was that, as near as you can recollect, and how long before or after Exall had told you of his imprisonment by Judge Perez?

28. Cross-question. What relations, if any, did Granger hold, or was he reputed to hold, with Guadalupe Soto's stepdaughter, and what was her name?

29. Cross-question. Were you personally acquainted with Ralph Martin, and what position did he ever hold, if any, in the Durango Mining Company, and when did he arrive and how long did he remain at San Dimas, and what was his reputation for truth and veracity?

30. Cross-question. Do you know or did you ever hear whether any of the local or State or Federal Mexican officials were interested as stockholders or otherwise in the profits of the Durango Mining Company or received any personal benefit from it during the time you were in its employ?

31. Cross-question. You were asked in your direct examination about the general character and value of the ore which you saw at the company's hacienda, and you said you had never assayed any of those particular

ores. Can you state from your observation of those particular ores, or general knowledge of the ores of the district, whether they were what are known as "rebellious" ores?

32. Cross-question. In his testimony before the Senate subcommittee, Colonel de Lagnel described the ore on the company's patio as follows: "That much of that ore that lay on the patio, and the greater part of it—I say the greater part, so much as to strike you—you could see shining yellow pyrites; it was covered with it." Please state whether, accepting Colonel de Lagnel's description of those particular ores as correct, they were of a rebellious or refractory kind, and what treatment they required to extract the silver out of them; also whether fire assays of such ores might not show large results, and yet their reduction on a large scale by such a stamp mill and such processes as were employed at the company's works at Tayoltita be unprofitable? Please state, also, what would be the effect of continued exposure of such ores to the atmosphere, and whether the Mexicans had an inexpensive way of successfully treating such ores.

33. Cross-question. In your answers to questions 149 and 150, in your direct examination, you said that you had never heard of any trouble between certain local authorities and Mr. Exall, and that it was impossible that there could have been any serious trouble between them without your hearing of it. You also said, in answer to question 158, that there could not have been any serious trouble between Soto and Exall without your hearing of it. Please read Soto's testimony, as printed on page 435 of the complainant's bill and exhibits, and state whether you ever heard of the rising of the people, or of the "orders from the political chief Marcos Mora," as to which Soto testified.

34. Cross-question. Where were you living and how were you employed in 1871 and 1872; and did you know or hear at that time that the Mexican authorities were taking testimony at San Dimas in opposition to the claim of La Abra Company for presentation to the United States and Mexican Claims Commission at Washington?

35. Cross-question. Did you have any conversations with Granger as to any of his various examinations by the Mexican authorities during that time? If so, when and where and to what effect, as near as you can recollect?

36. Cross-question. In answer to question 165 in your direct examination you said that La Abra Company never owned any pack mules. On what grounds do you make such a positive statement, when you have testified that you did not even know General Bartholow, the company's first superintendent? Did you not mean simply to say that you never knew or heard of La Abra Company owning any pack mules?

36*a*. Cross-question. What personal knowledge did you have in 1865 and 1866 of General Bartholow's operations when he was bringing up the company's machinery and supplies from Mazatlan to Tayoltita? Did you know or hear that in the fall of 1865 it was almost impossible to hire pack mules, on account of the danger of their seizure and confiscation for military purposes?

37. Cross-question. You were asked in your direct examination (question 181) what Exall told you about the trouble he had with Judge Nicanor Perez, and you said that, if you remembered right, Judge Perez "arrested Exall for a few hours." Do you swear that Exall told you that he was arrested or imprisoned by Judge Perez only for a few hours?

38. Cross-question. In answer to question 216 in your direct examination you said that Juan Nepomuceno Manjarrez was never employed by La Abra Mining Company. Do you swear that he was never employed by General Bartholow for the company; or do you simply mean to say that, as far as you know, he was never in the company's employment?

39. Cross-question. In answer to question 198 in your direct examination you stated that Granger said what the letter-copying book was. Do you recollect what was the occasion of that statement—under what circumstances he told you that that particular book was the company's letter-copying book? How came the book to be mentioned by him in conversation with you, and in what house or building were you at the time?

40. Cross-question. Did you ever examine or see in that book the press copy of Exall's letter of February 26, 1868, to Granger?

41. Cross-question. Is it not a fact that the first translation which you made of that letter into Spanish for Granger was made from the letterpress copy book?

42. Cross-question. About how soon after Exall left did you first see the original of that letter, and was it at Tayoltita or at San Dimas that you first saw it?

43. Cross-question. Did you see the original of that letter before you saw the letterpress copy book? And, if so, how long before, as near as you can recollect?

44. Cross-question. What was the occasion of your making your first translation of that letter? Please state what Granger said by way of explanation of his request when he asked you to make the translation.

45. Cross-question. Was not Granger at that time a fair Spanish scholar, and could he not have made the translation himself?

46. Cross-question. Are you acquainted with Alfred A. Greene? And, if so, when and where did you first meet him, and what was his employment at that time?

47. Cross-question. Have you seen and conversed with him, or received any letter or communication from him since March, 1877, relating to La Abra Company's affairs, or to the deposition that you made in August of that year? If so, please state what he said to you, and, if you have received any letters or communications from him in writing, please hand them to the commissioner that they may be identified and attached to your deposition.

48. Cross-question. Have you ever had any communications in writing with Gen. James E. Slaughter, in regard to your deposition of August, 1877, or in any way touching the affairs of La Abra Company or giving your testimony in this case? If so, please produce such communications and hand them to the commissioner that they may be identified and attached to your deposition.

49. Cross-question. How lately before giving your deposition at Mazatlan in 1877 had you seen Granger? Please state when, and where, and how often, as nearly as you can recollect.

50. Cross-question. Did you have any conversation with Granger on the subject of your deposition of August 9, 1877, prior to making it, or about any negotiations of his then or subsequently with the Mexican Government, or any of its officers, for the production of the books and papers of

the company, or obtaining evidence against the company's claim? If so, please state as fully as you can recollect what passed between you on these subjects, or any of them.

51. Cross-question. Did Granger tell you what the Mexican Government was going to give him for the company's books and papers, and for the depositions he might procure?

52. Cross-question. Do you know that he promised or engaged to obtain a deposition from you?

53. Cross-question. Have you ever seen his contract with the Mexican Government, or any copy of it?

54. Cross-question. At the time you first saw the letterpress copy book, and he told you what it was, did he say that he had any other books, records, or papers belonging to the company?

55. Cross-question. Did you ever see or hear of any books, letters, or papers belonging to the company's records other than the letterpress copy book and the letter of February 26, 1868, from Exall to Granger, during the first five years after Exall's departure from Tayoltita? If so, please state what other books or papers you saw, or what you heard in general about the existence of such records in the San Dimas district at that time.

56. Cross-question. What compensation, if any, have you received or do you expect to receive as a witness in this case?

57. Cross-question. Was anything ever said to you about giving your testimony on behalf of the Mexican Government while the Claims Commission was in session at Washington—say from 1869 to 1875? If so, what and by whom, and why were you not examined as a witness at that time?

58. Cross-question. Did you not know or hear after Exall left that Guadaloupe Soto and his family were living in the company's hacienda?

59. Cross-question. Were you at the company's hacienda after Exall left and before you went yourself to San Francisco in the beginning of 1869?

60. Cross-question. Did you have any correspondence with Granger from the beginning of 1869 to October, 1871, or did you know or hear anything about La Abra Company's claim during that period?

61. Cross-question. Why did you say in answer to question 189 in your direct examination that Granger went to live at San Dimas very soon after Exall left Tayoltita? Do you recall any circumstance that enables you to fix the time of his removal?

62. Cross-question. Was he living at San Dimas or had he been employed by Mr. Ralph Martin before you left for San Francisco in the beginning of 1869?

63. Cross-question. You say in your deposition of August 9, 1877, that you left for San Francisco at the beginning of 1869 and returned to Mexico and San Dimas in the month of October, 1871. Did you make your first translation of Exall's letter of February 26, 1868, before you left for San Francisco, and did you make it at Tayoltita or San Dimas?

64. Cross-question. Was it before you left for San Francisco in 1869 or after you returned in 1871 that you first saw the company's letterpress book; and, if after, how long after, as near as you can recollect?

65. Cross-question. Who was superintendent of the Durango Mining Company when you returned in October, 1871, to San Di nas?

66. Cross-question. Did you know or ever hear what parts of the machinery of La Abra Company were moved from Tayoltita to San Dimas by Capt. C. B. Dahlgren, or from whom or on what conditions he obtained those articles for the use of the Durango Mining Company while he was its superintendent?

67. Cross-question. In what capacity and for how long were you employed by the Durango Mining Company at San Dimas during Captain Dahlgren's superintendency?

68. Cross-question. In your answer to question 223 in your direct examination you said that Sloan could not have remained a long time at Tayoltita after Exall left. Do you not know that he was at San Dimas, and was examined in court at that place as a witness for the Mexican Government in October, 1871?

69. Cross-question. Did you ever know Robert R. Symon, and if so, whenand where; and did you ever have any conversation or correspondence with him about the deposition you made in August, 1877, or about the affairs of La Abra Company, or Granger's contract for the production ofevidence with the Mexican Government?

70. Cross-question. Is Symon living or dead, and where was he when you last heard from him or of him?

71. Cross-question. What were Granger's relations with Symon, and did you know of any correspondence between them in 1877?

72. Cross-question. How soon after your return to Mexico and San Dimas in 1871 did you visit Tayoltita, and at that time, or subsequently, did you ever see Francisco Torres while he was working any mine or mines that formerly belonged to La Abra Company; if so, what mine or mines was he working, and where was he living at the time?

73. Cross-question. Did you know a man by the name of Calderoon; and if so, who was he, and did he ever work any mine or mines that formerly belonged to La Abra Company; and if so, what mine or mines, and how long did he work them?

74. Cross-question. Had Ignacio Manjarrez commenced to tunnel La Abra Mine before you left San Dimas?

75. Cross-question. In your direct examination, in answer to questions 258 and 259, you mention Somera as occupying the hacienda. Was that Eugenio Somera, and when was it, and at what mine or mines, if any, formerly belonging to La Abra Company, was he working?

76. Cross-question. If you shall say that Somera worked El Rosario or La Luz Mine, was it after or before those mines were worked by Francisco Torres?

77. Cross-question. You say, in answer to question 257 in your direct examination, that you "understand after Granger left that several families occupied the houses," but you do not remember any one in particular. Do you mean to say that several families occupied the hacienda at the same time?

78. Cross-question. Were you at the company's hacienda between March, 1868, and January, 1869; and if so, when, and how often?

79. Cross-question. Whom, if anyone, other than Granger, did you see occupying the hacienda subsequent to March, 1868, and before you left, in the beginning of 1869?

80. Cross-question. Did you see Guadalupe Soto at Tayoltita during that period; and if so, where was he living at that time?

81. Cross-question. Where did you live and how were you employed from the beginning of 1869 to October, 1871? Give places and dates in detail as nearly as you can recollect.

I hereby certify that on the 26th, 27th, and 28th days of November, 1894, before me, James S. Manley, commissioner United States circuit court, northern district of California, at my residence, No. 1609 Lafayette street, in the city of Alameda, in the county of Alameda, State of California, personally came before me Frederick Sundell, a witness on behalf of the United States, to depose in that certain case depending in the United States Court of Claims, at Washington, D. C., wherein the United States of America is complainant and La Abra Silver Mining Company et al. are respondents; and the said Frederick Sundell, having been previously duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said case, the cross-interrogatories her to attached were propounded by me to the witness in the numerical order in which they occur, and that the witness did not see the cross-questions, nor was he informed of them until they were put to the witness by me.

Answer to cross-question 1. No; not measuring in a horizontal line. The word miles is not a mistake for leagues. I mean 4 or 5 English miles, in a more or less straight line, conforming to the configuration of the country, as I surveyed and measured it for a proposed telephone line.

Answer to cross-question 2. The records of denouncements and other transactions, affecting the titles to mines in the mineral district of San Dimas, were kept in the office of the prefect of the district, and to said prefect application would have to be made for copies of the deeds or records affecting such titles. At the beginning of my residence there the office of the prefect was located at Gavilanes and afterwards removed to San Dimas.

Answer to cross-question 3. I never had anything to do with the denouncement of El Rosario mine by James Granger, and if I did know anything about the denouncement at the time or subsequently, I have forgotten about it.

Answer to cross-question 4. I was employed by the Durango Mining Company at their mines in San Dimas as assayer. I was aware that General Bartholow was building a mill for the reduction of silver ore for the La Abra Company at Tayoltita during the fall of 1865 and the spring of 1866; and also that the company was working some of their mines during that time.

Answer to cross-question 5. I included James Granger among La Abra Company's superintendents for the reason that when Charles Exall went away he left Granger in charge of the property, executed a power of attorney to him, which power of attorney is an exhibit attached to my direct testimony, and Granger was in charge of the property; and for these reasons others as well as myself considered him in charge of, or superintendent of, La Abra Company; and furthermore, I never heard of the power of attorney being revoked or repudiated by the company.

Answer to cross-question 6. When I gave my testimony in August, 1877, the district judge, Rafael Villegas, intimated that testimony was

required that had a bearing on the events complained of by La Abra Company, and to the time said events had taken place. As Mr. Granger's advent as a "in charge of" or "superintendent" of La Abra Company's property was a subsequent event, I could not mention him as one of them. At the present time, when subsequent events are inquired into, I feel obliged to mention Mr. Granger, as his doings seem to be of much importance.

Answer to cross-question 7. Under the authority of the power of attorney that Exall left him, and already referred to.

Answer to cross-question 8. I know nothing of his authorization to dispose of the company's property, or to act for the company, except the power of attorney referred to, and his actions while there actually in charge.

Answer to cross-question 9. It is a fact that as late as 1873 Granger relied upon Exall's letter or power of attorney of February 26, 1868, and produced it in court, but I can not say it was an authorization to dispose of the company's property, nor can I say it was his sole credential or authority.

Answer to cross-question 10. Certainly; I saw the original, or what purported to be the original, of Exall's letter of February 26, 1868, to Granger. I saw it for the first time very soon after Exall left, at my house in San Dimas, in the possession of Mr. Granger. The only other time I ever saw it (the original) was when I translated it in court at San Dimas in 1873. I do not know where it is now, or what has become of it.

Answer to cross-question 11. I can't recollect what kind of paper it was written on, nor can I say whether or not it showed that it had been copied in a letterpress copy book.

Answer to cross-question 12. As far as I can remember, I was in San Dimas on February 26, 1868, and for two weeks thereafter.

Answer to cross-question 13. In February, 1868, at San Dimas.

Answer to cross-question 14. I have no other reason except the date of Exall's power of attorney of February 26, 1868, and that is the reason I fix the date of his departure from Tayoltita in February of 1868.

Answer to cross-question 15. I have looked at the letter referred to. I think I know the Rice mentioned in said letter. There was a Mexican nicknamed "Jose Rice," or "Mister Rice," who was employed by the Americans as a messenger and as a servant on the road to and from Mazatlan or Durango. If the man is still living in San Dimas he can be found by those names, as the people have forgotten his true name.

Answer to cross-question 16. The journey from Tayoltita to Mazatlan, barring accidents, could be made at that season (February or March, 1868) in three or four days on a good saddle mule.

Answer to cross-question 17. I do not remember whether or not Mr. Joseph Rice went to the city of Durango toward the close of 1867.

Answer to cross-question 18. I remember being told late in 1867 that Guadalupe Soto had taken possession of La Abra Company's lower hacienda, known as Guadalupe, but I do not remember who told me.

Answer to cross-question 19. I have no recollection at all of any knowledge or of being informed late in 1867, or early in 1868, that Mr. J. G. Rice and Señor del Valle were requested by Exall to use their good offices at Durango City to stop those proceedings of Soto's.

Answer to cross-question 20. I don't remember anything about it.

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Answer to cross-question 21. My relations with Granger were always friendly, and they were neither more nor less intimate and friendly after Exall's departure than before.

Answer to cross-question 22. I know of no other building erected by La Abra Company than the house and the stamp-mill. The house was used for store, storerooms, and office, under the same roof. The company did not put up stables, blacksmith shops, and other buildings, because those were included in the purchase of the hacienda, together with another big building, which was used by them for sleeping and store rooms.

Answer to cross-question 23. My best recollection is that the company's "house" was about 20 feet wide and not less than 100 feet long.

Answer to cross-question 24 I do not remember how many times I was at the company's hacienda between March 18, 1867, and March 1, 1868. The process used in the reduction of the ore was what was then called the Washoe pan process; although there was a furnace for roasting the ore, it was used to a very small extent—only experimentally—as I was told by Mr. Elder.

Answer to cross-question 25. I was testifying from memory. I meant 9 pounds Mexican weight, which is about 2 per cent heavier than the English avoirdupois.

Answer to cross-question 26. The Mexican mint price for silver at that time was $9 a marc, which is equal to $18 a pound.

Answer to cross-question 27. To the best of my recollection it must have been about three months before Exall left that I last visited the hacienda; that would be about one month before Exall told me of his imprisonment by Judge Perez.

Answer to cross-question 28. She was Granger's mistress, and her name was Cecilia Jimenez.

Answer to cross-question 29. I was very well acquainted with Mr. Ralph Martin; he was superintendent of the Durango Mining Company. He arrived at San Dimas about October, 1867. I do not know the time of his departure, for I was not in Mexico at that time. As far as I know, his reputation for truth and veracity was very good.

Answer to cross-question 30. I never heard anything about that, one way or the other.

Answer to cross-question 31. My general knowledge of the ores in that district entitles me to call them free milling ores and not rebellious ores.

Answer to cross-question 32. Colonel de Lagnel's description may be accepted as substantially correct, but the presence of "shining yellow pyrites" does not make the ores in that district rebellious.

After the ore has been treated by the pan process, the "sulphurets" which still contain silver or gold are separated from the gangue of the ore by concentration, and are treated either by roasting or by smelting.

A fire assay of ore, properly done, will always give the correct amount of gold or silver in the ore. In practical working of the same ore it is expected to get out from 80 per cent to 95 per cent of the assay.

The ores in the district of San Dimas do not change, although they may be exposed to the atmosphere for a number of years.

The Mexican "patio process" for silver extraction is more expensive than the "pan process."

54 Answer to cross-question 33. I heard of the so-called "rising of the people" and the "orders from the political chief, Marcos Mora," but I did not consider the same as serious trouble, but only as petty incidents, annoying for the moment and devoid of results.

Answer to cross-question 34. Part of 1871 I was traveling in different parts of Mexico, until I returned to San Dimas about the month of October of that year. In 1872 I was temporarily absent from San Dimas, visiting new mining camps in Nevada and Utah, so it happened I was not there when the Mexican authorities were taking testimony in San Dimas in opposition to the claim of La Abra Company for presentation to the United States and Mexican Claims Commission at Washington.

Answer to cross-question 35. I did not have any conversation with Granger as to any of his various examinations by the Mexican authorities during that time, as I was not there.

Answer to cross-question 36. I can say that I positively heard from George Grassie, who was on the road to get up the freight for the Durango Mining Company, and who was very well acquainted with Mr. Grove and Dr. Hardy, who were on the road for La Abra Company on the same business, that La Abra Company never was the actual owner of a train of pack mules. Sometimes a nominal transfer was resorted to to prevent interference of the military authorities.

Answer to cross-question 36*a*. I had no personal knowledge of General Bartholow's operations when he was bringing up the company's machinery and supplies from Mazatlan to Tayoltita in 1865 and 1866. I knew that it was sometimes difficult, but by no means impossible, to hire pack mules in the fall of 1865. The two companies procured all the mules they wanted, but the freight charges were higher than usual.

Answer to cross-question 37. I swear that, to the best of my knowledge, recollection, and belief, that Exall told me that he was arrested by Judge Perez only for a few hours.

Answer to cross-question 38. Juan Nepomuceno Manjarras was a Mexican gentleman, deriving a sufficient income from his ranch near the town of San Ignacio, State of Sinaloa, to enable him to live comfortably without being obliged to serve for wages or salary. For this reason I think he made a true statement to me when he said that he never was in the employ of La Abra Company.

Answer to cross-question 39. I saw the book in the house where Mr. Granger lived for a time in San Dimas, but I do not remember the particular circumstances that brought about the conversation in regard to the book.

Answer to cross-question 40. No.

Answer to cross-question 41. No.

Answer to cross-question 42. It was a few days after Exall left that I first saw the original of that letter in San Dimas.

Answer to cross-question 43. Yes; several years.

Answer to cross-question 44. I made the translation at Mr. Granger's request. He wished to have it in the Spanish language, so as to be prepared to show by what authority he was in charge of La Abra Company's property.

Answer to cross-question 45. He understood Spanish fairly well, and I think he could have made a translation that would have been understood.

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Answer to cross-question 46. I am acquainted with Mr. Alfred A. Greene. I first met him in San Dimas, when he was on his way from Durango to Mazatlan, but I do not remember the time, and I do not know what his occupation was.

Answer to cross-question 47. I have never conversed with him nor received any letter or communication from him since March, 1877, relating to La Abra Company's affairs, nor to the deposition that I made in August of that year.

Answer to cross-question 48. I have never had any communication in writing with Gen. James E. Slaughter in regard to my deposition of August, 1877, or in any way touching the affairs of La Abra Company, or giving my testimony in this case. I don't know General Slaughter, nor never heard of him before.

Answer to cross-question 49. As far as I can recollect I saw Granger at Mazatlan during my stay there of about a week, and we were staying at the same hotel, and probably saw him every day.

Answer to cross-question 50. I did have a conversation with Granger on the subject of my deposition of August 9, 1877, prior to making it, because he communicated to me verbally the request of the district attorney, L. Gaona, to have me examined in regard to the claim. I never had any conversation with Granger about any negotiations of his then or subsequently, with the Mexican Government or any of its officers for the production of the books and papers of the company, or obtaining evidence against the company's claim.

Answer to cross-question 51. No; Granger never told me anything about that.

Answer to cross-question 52. I never knew anything about that.

Answer to cross-question 53. I have never seen nor never heard of any contract he [Granger] had with the Mexican Government, nor any copy of it.

Answer to cross-question 54. No; he did not tell me about any other books.

Answer to cross-question 55. I never saw nor heard of any books, letters, or papers belonging to the company's records other than the letter-press copy book and the letter of February 26, 1868, from Exall to Granger, during the first five years of Exall's departure from Tayoltita.

Answer to cross-question 56. I received from Mr. Robert B. Lines, the attorney for the United States in this case, at the time I gave my testimony in chief, about the first part of the month of October last, the sum of $4 as witness fees and mileage; that is all I have received and all I expect to receive.

Answer to cross-question 57. Nothing was ever said to me about giving my testimony on behalf of the Mexican Government while the claims commission was in session at Washington from 1869 to 1875.

Answer to cross-question 58. I never knew anything about that.

Answer to cross-question 59. I do not remember that I made any special visit to La Abra Company's hacienda after Exall left and before I went to San Francisco, but I do remember that I passed by the hacienda several times during that time on my way to the mountains. Sometimes I went in and at other times I passed by.

Answer to cross-question 60. I had no correspondence with Granger during that time. I did hear something about La Abra Company's claim during that period from conversations with Mr. Joseph Rice.

Answer to cross-question 61. There is no particular circumstance that enables me to fix the time of Granger's removal to San Dimas; it is only the best of my recollection.

Answer to cross-question 62. He was living at San Dimas, but he was not employed by Mr. Martin before I left for San Francisco in 1869.

Answer to cross-question 63. I made the first translation of Exall's letter of February 26, 1868, at San Dimas, before I left for San Francisco.

Answer to cross-question 64. I saw it after I returned in 1871, but I can not fix the date nearer than to say it was some years after my return.

Answer to cross-question 65. C. B. Dahlgren was the superintendent when I returned in October, 1871.

Answer to cross-question 66. I can say that the principal piece of machinery that I saw employed at the Durango Mining Company's mill, taken from Tayoltita, was the water wheel. I do not know if any other piece of machinery was taken. I never knew from whom or on what conditions he obtained that article.

Answer to cross-question 67. I was never employed by the Durango Mining Company after I left its service in 1869.

Answer to cross-question 68. To the best of my recollection, Mr. Sloan left Tayoltita soon after Exall left. I am aware that he afterwards remained in the neighborhood, working at Ventanas, San Vicente, and San Dimas. About his being examined in court I know nothing.

Answer to cross-question 69. I first knew Robert R. Symon in Mazatlan about 1876. I never had any conversation or correspondence with him about the deposition I made in August, 1877, or about the affairs of La Abra Company, or Granger's contract for the production of evidence.

Answer to cross-question 70. I do not know whether he is now living or dead, and when I last heard of him, about two years ago, he was in England.

Answer to cross-question 71. Granger's relations with Symon, so far as I know, were very friendly, but I know of no correspondence between them.

Answer to cross-question 72. On my return to San Dimas, in 1871, I passed through Tayoltita and did see Francisco Torres, living in a room at La Abra Company's hacienda, and understood that he was working the La Luz mine, that formerly belonged to La Abra Company, but if he worked any other mine I do not now remember.

Answer to cross-question 73. I did know a man by the name of Calderon; he was a merchant in San Dimas. I am aware that he worked the Arrallan mine, that formerly belonged to La Abra Company. I do not remember how long he worked it, but it was only a short time.

Answer to cross-question 74. Yes; he had commenced the tunnel before I left San Dimas—1890—and I believe it was about the year 1879 or 1880 that he commenced to tunnel.

Answer to cross-question 75. It was Eugenio Somera that occupied La Abra hacienda. I only know that he worked the Tecolota mine, which did not belong to La Abra Company.

Answer to cross-question 76. I am not aware that he worked El Rosario or La Luz mines, but if he did so he worked them after Francisco Torres.

Answer to cross-question 77. No; I do not mean to say that several families occupied the hacienda at the same time, but that one family after the other occupied it.

Answer to cross-question 78. Answered in my answer to cross-question 59.

Answer to cross-question 79. I am not aware of the names of the people I did see occupying the hacienda subsequent to March, 1868, and before I left in beginning of 1869.

Answer to cross-question 80. I do not remember seeing Guadalupe Soto subsequent to March, 1868, and before I left in 1869, at Tayoltita, and do not know where he was living at that time.

Answer to cross-question 81. On my leaving Mexico in 1869, I went to San Francisco, where I remained some time. After that I went to New York, stayed a short time there, went to Europe, traveled in England, France, Germany, and Sweden. I remained in Sweden eight months. I returned to New York and California, and from California returned to Mexico. I was employed principally in traveling.

FEDIC. SUNDELL.

Deposition of Francisco Torres, for complainant, taken at San Francisco, Cal., on the 9th and 10th days of October, A. D. 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney-General; respondents' counsel, none.

FRANCISCO TORRES, having been duly sworn, testified through Thomas M. Jewett, interpreter, as follows:

By Mr. LINES:

1. Question. Please state your full name, age, residence, and occupation.

Answer. My name is Francisco Torres; my age is 66 years; my residence is San Dimas, State of Durango, Mexico; my profession is that of a miner.

2. Question. How long have you followed that profession?

Answer. I have been a miner during the last twenty-five years.

3. Question. How long have you lived in San Dimas?

Answer. Ever since I was born. I was born there.

4. Question. Do you know the mines which were at one time operated by La Abra Mining Company at Tayoltita?

Answer. Yes, sir; I am acquainted with those mines.

5. Question. How long have you known those mines?

Answer. Ever since my infancy I began to know them.

6. Question. Did you ever work in those mines?

Answer. I worked in one of those mines, in the mine called La Luz.

7. Question. At what time did you work in La Luz mine?

Answer. I do not recollect when, because I am not a man of letters.

8. Question. Was it before or during the occupancy of those mines by La Abra Mining Company that you worked in them?

Answer. It was after that mine had been worked by the mining company of La Abra that I denounced the same.

9. Question. How long after?

Answer. About four years afterwards.

10. Question. Who worked the mines before La Abra Mining Company?

Answer. Juan Castillo del Valle and Don Ygnácio Manjarrez.

11. Question. How long did Del Valle and Manjarrez work the mines?

Answer. For some time. It must have been between twelve and fourteen years that they worked that mine.

12. Question. Did they work any other mine besides La Luz?

Answer. They also worked the mine called El Rosario, the mine called El Cristo, the mine called El Arrayan; only those four mines.

13. Question. Did you have anything to do with those mines while they were worked by Del Valle and Manjarrez?

Answer. Yes, sir; in the capacity of an employee, a refiner.

14. Question. How long were you so occupied?

Answer. Perhaps less than a year. I used to go there and work as a refiner.

15. Question. How long before La Abra Company arrived there did you work there?

Answer. About two years before La Abra Company began to work those mines?

16. Question. Did you know anything of the sale of those mines by Del Valle and Manjarrez to La Abra Mining Company?

Answer. Only from hearsay. I heard that they had made that sale. Being there, of course this matter came to my knowledge.

17. Question. What, in a general way, was the result of the metals of the ores which you refined?

Answer. They gave very fine results, but those ores came from the El Rosario Mine. That mine was never worked by La Abra Mining Company.

18. Question. How was the ore; plentiful or otherwise?

Answer. It was not very abundant. It would yield from 70 to 100 cargas per week.

19. Question. How many pounds to the carga?

Answer. About 12 arrobas. (There are 25 pounds to an arroba.)

20. Question. Were the ores plentiful in the other three mines worked by del Valle and Manjarrez?

Answer. The ores from the other three mines were not abundant. From the working of La Luz mine those gentlemen lost about $40,000.

21. Question. About how much silver per carga would the ores yield from El Rosario and the others?

Answer. The El Rosario mine yielded 3 marcos to the carga; the others did not yield anything.

22. Question. And how much is a marco?

Answer. Each marco has 8 ounces, as we understand it there.

23. Question. It would be about $200 to the ton?

Answer. Yes, sir.

24. Question. What mines did La Abra Company work?

Answer. La Luz and El Cristo only.

25. Question. Did anybody to your knowledge work La Abra mine?

Answer. Do you mean before or subsequently?

26. Question. From the time Del Valle and Manjarrez commenced to work?

Answer. About three years ago La Abra mine was denounced by Señor Manjarrez. I think it is over three years ago.

27. Question. When did you leave San Dimas?

Answer. I believe I left San Dimas on the 23d day of September last.

28. Question. Was anyone working La Abra mine when you left San Dimas?

Answer. Nobody was working the said mine; it is almost two years since the mine was abandoned.

29. Question. What work did Manjarrez do on La Abra mine?

Answer. He opened a tunnel.

30. Question. How far?

Answer. About 100 varas, perhaps more.

31. Question. Did it strike the perpendicular shaft?

Answer. It did not reach the shafts; he died before the same was completed.

32. What kind of metal, if any, did he take out from the tunnel?

Answer. He found no ore except a few small specimens of silver.

33. Question. Do you know how much it cost him to open that tunnel?

Answer. It must have cost him very near $70,000; he expended that amount himself alone.

34. Question. How often, if ever, did you visit the mines when La Abra Company was working them?

Answer. We were invited as friends to go there, and we would go there on a visit for the purpose of expressing our opinion as miners.

35. Question. Who do you mean by "we"?

Answer. By "we" I refer to myself and to certain surveyors that had been invited to go there. They were requested to express their opinion.

36. Question. What were their names?

Answer. I am unable to recall their names now.

37. Question. About how often did you personally go to the mine or to the hacienda of La Abra Company while it was in existence in Mexico?

Answer. Sometimes I would go there once or twice every three or four days, every week, or every month; I would go there on business sometimes. I was also living there during a period of three years.

38. Question. Living where?

Answer. Living at the hacienda. I established a hacienda there.

39. Question. At Tayoltita?

Answer. Yes, sir.

40. Question. Was this while La Abra Company was working there?

Answer. No, sir; it was afterwards. It was two or three years after the mines had been abandoned by La Abra Mining Company.

41. Question. Did you see during your visits to Tayoltita, when the mining company was there, the ores which they had extracted from their mines?

Answer. I did not take any notice of the ores at the time La Abra Company was working the mine.

42. Question. Did you see any ores left there after La Abra Company ceased working?

Answer. I did; I saw the ores, and the ores still exist there.

43. Question. How lately did you visit Tayoltita?

Answer. In May last I went there for the purpose of refining some ore for Antonio Galarza.

44. Question. What was the character of the ores left there by La Abra Company?

Answer. In La Luz mine tepetate (worthless rock) is to be found there.

45. Question. Where were the ores left by the La Abra Company?

Answer. They were left in the patio of the hacienda (in the yard surrounding the building).

46. Question. About how much was there of these ores?

Answer. From 5,000 to 6,000 cargas; there was a great deal of ore there. I mean tepetate (worthless ore).

47. Question. Did you know the different superintendents employed by La Abra Company?

Answer. Yes, sir; one was a general, the other a colonel, the other El Mudo—he was known by that name; afterwards it was Don Santiago Granger.

48. Question. Were you there often during the superintendency of the General?

Answer. I would go there for the purpose of making purchases.

49. Question. During your visits did you talk to the General or his officers or employees?

Answer. No, sir; I did not. Only on one occasion I spoke to Granger and others—only on one or two occasions; I then went to see them on business.

50. Question. Did you know the Mexican miners employed by La Abra Company?

Answer. Do you mean the common laborers?

51. Question. Yes; or the operators.

Answer. Yes, sir; I know many of them.

52. Question. Did you ever talk to them about the affairs of the company?

Answer. On several occasions I spoke to several of the men in reference to the working of the mine.

53. Question. Did you ever hear of any trouble during the superintendency of the General which the company had with the officials of the Government?

Answer. No trouble occurred whatever to my knowledge.

54. Question. Do you know whether La Abra Company owned any mule trains?

Answer. No, sir; they had three or four mules that were used for riding purposes.

55. Question. How did La Abra Company get its supplies to Tayoltita?

Answer. By means of packing mules.

56. Question. Whose property were the mules?

Answer. To different parties those packing mules belonged; some parties from La Noria and from other places.

57. Question. Did you ever hear of any of those mule trains being seized by the military authorities?

Answer. Yes, sir; I recollect very distinctly that no seizures were made by the military authorities because there were no mules.

58. Question. I am speaking of the mules owned by these different contractors and employed by the company.

Answer. Not to my knowledge.

59. Question. Did you know a man by the name of Scott, or Scotty, in the employ the company?

Answer. No, sir; I was not personally acquainted with him. I might have seen him, but I do not know that I knew him.

60. Question. Did you ever hear of his being robbed by the troops?

Answer. I do not believe he was ever robbed, because no robbery ever took place at Tayoltita. No robbery has ever been committed at that place.

61. Question. Did you know a man named Grove employed by the company?

Answer. No, sir; I did not know him. I saw quite a number of parties, but did not know them by name.

62. Question. Did you ever hear of any trouble between the company and civil authorities?

Answer. I never heard that any difficulties arose between the company and the civil authorities at that place.

63. Question. Did you ever see the reduction works of La Abra Company in operation?

Answer. While I was at the mining camp where the mine was situated I was informed that some ore was being reduced.

64. Question. Did you ever see any of the metal extracted from the ores?

Answer. I recollect seeing the pack mules coming from the mine to the hacienda with ore.

65. Question. I am asking about the metal which had been extracted from the ores.

Answer. I have no recollection of ever having seen the silver which had been taken from the ore. I recollect that on one occasion Mr. Rice was offered a small bar of silver.

66. Question. By whom?

Answer. Said to belong to the company. It was taken by a party there for the purpose of selling it.

67. Question. Who was the party?

Answer. It was taken by Don Santiago Granger.

68. Question. Was that before or after El Mudo had left?

Answer. It was after El Mudo left.

69. Question. What were you doing in San Dimas at that time?

Answer. I was in the employ of Mr. Rice in the hacienda.

70. Question. Who was Mr. Rice?

Answer. It was Mr. Jose Rice. He was the superintendent of the mine known as the Candelaria.

71. Question. To what company did the Candelaria belong?

Answer. To the Durango Mining Company.

72. Question. Did the superintendents of La Abra Mining Company come often to San Dimas?

Answer. Yes, sir; they would go there very often and would stop at the hacienda of El Baluarpe with Mr. Jose Rice.

73. Question. Did you ever talk with any of them at San Dimas?

Answer. No, sir; I never spoke to them. On one occasion I went with them to Mazatlan.

74. Question. With which superintendent?

Answer. With Jose Rice.

75. Question. With which superintendent of La Abra Company?

Answer. With the Colonel; but I do not know his name, for I never spoke with him.

76. Question. About how often did El Mudo come to San Dimas?

Answer. He would probably come once a month or once every three months.

77. Question. Do you remember when El Mudo left Tayoltita?

Answer. I could not give the date when he left there. It might have been some time in 1867, but I am not certain.

78. Question. Do you remember the circumstance of his leaving?

Answer. I recollect when he left there.

79. Question. About how long before you heard he had left did you see him?

Answer. I do not recollect the year; I think it was in 1867, but I am not positive.

80. Question. Did you know Macario Olvera?

Answer. Yes, sir; I knew him well. He was the political chief.

81. Question. Did you know his predecessor, Marcos Mora?

Answer. I was also acquainted with him.

82. Question. Did you know Guadalupe Soto?

Answer. I know him.

83. Question. Do you know anything of the relations between El Mudo and those men?

Answer. With Mr. Mora, I am certain, he had no relations of any kind, and the same thing I can say in regard to Macario Olvera. He must have had some relations with Guadalupe Soto, because he was living there.

84. Question. Who was living there, and where?

Answer. Guadalupe Soto was living near the hacienda.

85. Question. In whose house was Soto living when El Mudo was there?

Answer. In a house owned by himself.

86. Question. Do you know of his ever occupying a house belonging to the company?

Answer. I think he did.

87. Question. What was that house, and where was it?

Answer. It is situated near the hacienda, at or near one of the corners.

88. Question. What kind of a house was it?

Answer. It was a small adobe, with a tile roof.

89. Question. Was there a reduction works there?

Answer. Yes, sir; that belonged to the company.

90. Question. What kind of process did they use?

Answer. It was a process of quicksilver and salt.

91. Question. About how far was this from the stamp mill of the company?

Answer. About 6 yards.

92. Question. I am speaking of the hacienda of the Beneficio occupied by Guadalupe Soto.

Answer. About 200 varas.

93. Question. And about how far from the house occupied by El Mudo?

Answer. About 30 varas.

94. Question. How far was the stamp mill from the main hacienda of the company?

Answer. About 100 varas; perhaps less.

An adjournment was here taken until to-morrow morning at 11 o'clock.

WEDNESDAY, *October* 10, 1894.

Examination of FRANCISCO TORRES.

By Mr. LINES:

95. Question. Mr. Torres, when you were working as a refiner for Del Valle and Manjarrez, how long did they continue to take out ores from El Rosario mine?

Answer. During the time I was working for them the El Rosario mine was being worked by them. The ores were yielding good, abundant metal of great fineness. After that they were compelled to cease operations, because the ores were not abundant and not so rich. The mine also became filled with water.

96. Question. About what time did they stop operations in El Rosario mine?

Answer. I am unable to recall the year when they ceased operations in El Rosario mine.

97. Question. About how long after you left their employ, or how long before they sold the mine to La Abra Company, did they stop working El Rosario mine?

Answer. About two years after I ceased working for them they sold the mine to La Abra Mining Company.

98. Question. About how long before the sale, or about how long after you left them did they stop the working in El Rosario mine?

Answer. About two years that the El Rosario mine was not being worked before the sale was made. The mine had already been abandoned, but the mine was always known as being their property.

99. Question. What mines, if any, were they working when they made the sale?

Answer. They were working the mines known as La Luz, El Arrayan and El Cristo.

100. Question. Were there any ores in those three mines, in the patio at the mines or at the hacienda, when the sale was made?

Answer. There were about 80 cargas or loads of ore from the mine known as La Luz in the patio of the hacienda. It was then being reduced.

101. Question. Did you see the ore that you speak of at that time?

Answer. Yes; I saw the ores.

102. Question. Did you see at that time the American gentlemen that came to buy the mines?

Answer. Yes, sir; I saw several gentlemen there, but I did not know who they were. I was told that they represented parties belonging to a company who desired to make the purchase.

103. Question. Did you afterwards know any one of those gentlemen?

Answer. No, sir; I did not.

104. Question. Was the General there at that time?

Answer. I could not say whether the General was there at that time or not, or whether it was the agent of the purchaser.

105. Question. Do you know what result those 80 cargas of ores from La Luz showed when those gentlemen were there?

Answer. Yes, sir; I did. They yielded 500 marcos of silver, or 250 pounds of silver.

106. Question. How did it happen if, as you say, La Luz ores were very poor and Del Valle and Manjarrez lost $40,000 working La Luz, how does it happen these 80 cargas yielded so much?

Answer. Because they found a very rich ledge of ore in the mine which produced the 80 cargas of ore which I have already referred to.

107. Question. Did you ever see the ledge from which these 80 cargas came?

Answer. Yes, sir; I saw it, and I was afterwards the owner of it, and I also lost $9,000 by the operation, having been induced to make the denouncement by reason of the richness of the ore. I made the denouncement after the mine had been abandoned by the Americans. It very often happens that rich veins are found after working the mine; then the ledge disappears and another rich vein is discovered. This happens after large sums of money have been expended in developing the mine.

108. Question. Did you see this vein before the sale to the company?

Answer. Before and after the purchase was made.

109. Question. Did you see it while the company was operating the mine?

Answer. No, sir; I did not go to the mine, and did not see it.

110. Question. What became of that vein when you did see it, after the company abandoned the mine?

Answer. I have already stated, and now repeat, that two years afterwards I denounced the mine.

111. Question. What became of the vein?

Answer. The vein is still there, and in all probabilities will always remain there.

112. Question. Did you take out ores from that vein?

Answer. Yes, sir; I did, but very small quantities with 40 or 50 men working the mine. They would take out from four to six cargas or loads per week. The finest of the ore was $12 per carga. The result was that I lost money and abandoned the mine.

113. Question. When you say the vein is there still, you do not mean the rich ores are still there?

Answer. Rich ores may be found, but nobody knows where.

114. Question. I want you to say whether or not the vein continued to yield rich ore?

Answer. If it is not being worked, how can the vein continue yielding rich ore?

115. Question. Why did you stop working the vein?

Answer. Because it did not pay me to work it. As I have already stated, I lost $9,000. The ledge continues, but it does not yield any, as the ores disappear in some places.

116. Question. Do you know how long Granger remained at Tayoltita after El Mudo left?

Answer. Nearly a year.

117. Question. Where did he go then?

Answer. He went to San Dimas.

118. Question. Did you see him often during the year he remained in Tayoltita after El Mudo left?

Answer. I used to see him at all times.

119. Question. What was he doing in Tayoltita?

Answer. Sitting down eating—enjoying himself—waiting for the company to come there with funds.

120. Question. Was there any work going on in the mines or the hacienda under Granger?

Answer. When Mr. Granger was there all operations ceased. He was taking care of the hacienda; he had been given charge of the hacienda by El Mudo. He was always waiting for funds, and funds were never sent to him.

121. Question. What did he do with the property of the company?

Answer. Sold small portions of the property that was there, such as salt, and whatever he could sell—instruments and other articles.

122. Question. What was the condition of the stamp mill while Granger was there?

Answer. The mill was standing and in a good condition, but it was not running.

123. Question. Do you know anything of any sale by Granger of any portion of the mill?

Answer. He sold portions of the mill; a portion of the machinery of the mill.

124. Question. To whom did he sell it?

Answer. I am unable to say to whom portions of the machinery were sold. I know that he sold portions of it to Mr. Rice and to Mr. Carlos Dahlgren.

125. Question. When Granger came to San Dimas, how long did he stay there?

Answer. He remained there three or four years. He established a commercial house there.

126. Question. You saw him often in San Dimas, also?

Answer. I used to see him every day. He was a merchant there. He established a store there.

127. Question. Did you ever see in his possession any books purporting to be books of La Abra Company?

Answer. As to that I could not say. I can not say that I saw the books.

128. Question. Do you know where he went when he left San Dimas?

Answer. He went to Mazatlan, and then he returned to San Dimas.

129. Question. Can you remember in what year he returned to San Dimas?

Answer. I can not recollect the year.

130. Question. What was he doing in San Dimas when he came back?

Answer. Keeping the books of certain houses. He also established himself in business in San Vicente.

131. Question. How far was San Vicente from San Dimas?

Answer. About two and a half hours' drive on horseback.

132. Question. Did you see El Mudo about the time he left Tayoltita?

Answer. Yes, sir; I saw him there about a month before he left Tayoltita; I was in company with Granger, and it was on a Sunday.

133. Question. Did you have any talk with him?

Answer. No, sir; I did not converse with him on that occasion.

134. Question. Did you know anything at that time of his intention to leave the mines?

Answer. No, sir; how could I know his intentions? I spoke with Mr. Granger, and he told me he was going away.

135. Question. Told you who was going away?

Answer. That El Mudo was going to leave there for the purpose of raising funds, either to work or pay debts.

136. Question. After El Mudo left, did you talk with Granger about the future operations of the company?

Answer. No, sir; in relation to that matter I did not speak with him.

137. Question. Did you know Jose Maria Loaiza?

Answer. I knew him only by sight.

138. Question. Do you know whether he is still living?

Answer. I am unable to say whether he is still living, or whether he is dead. My belief is that he is still living. It is stated that he resides at La Noria.

139. Question. Did you know Trinidad Gamboa?

Answer. I knew him by sight only.

140. Question. Do you know whether he is still alive?

Answer. I am unable to say whether he is still alive.

141. Question. Did you know Juan Francisco Gamboa?

Answer. I did not know him.

142. Question. Did Granger ever tell you that he expected El Mudo to return?

Answer. Yes, sir; he told me that he was going to return with funds, but he never returned.

143. Question. When you worked La Luz, had you any connection or association with Granger?

Answer. Our relations were only those of a friend.

144. Question. Did you not denounce El Rosario mine?

Answer. No, sir; I did not. I only denounced La Luz mine, and was interested in the mine of El Rosario in shares.

145. Question. With whom?

Answer. With Mr. Granger; but Mr. Granger did not perform any work.

146. Question. Did he put in any money?

Answer. Not a cent.

147. Question. Do you know of any difficulty that Castillo del Valle had with the authorities or people at Tayoltita before selling the mines to La Abra Company?

Answer. I have no knowledge of any difficulties having occurred between them.

148. Question. Mr. Torres, have you testified before in the matter in controversy respecting La Abra's claim against Mexico?

Answer. I did. I testified in the said matter at the city of Washington.

149. Question. Do you remember the year?

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Answer. Three or four years ago.

150. Question. Have you ever seen what purported to be a copy of the testimony given by you in Washington?

Answer. I took with me a book, but whether it is printed in English or Spanish I am unable to say. I have that book at home.

151. Question. Do you read English?

Answer. I do not speak or read the English language.

152. Question. Do you read Spanish?

Answer. I do not know how to read the Spanish language, either.

153. Question. Do you know anything further than what you have testified here as to the operations of La Abra Mining Company in Mexico?

Answer. I believe that I can not add anything further to what I have already stated.

his
FRANCISCO × TORRES.
mark.

Witnesses to the mark made by Francisco Torres:

THOS. M. JEWETT,
WALTER J. WOLF.

Deposition of Francisco Torres, taken on cross-interrogatories prepared by Mr. Crammond Kennedy, at Durango, Mexico, on the 19th day of December, 1894.

FRANCISCO TORRES, having been produced as a witness on behalf of the complainant, and having been examined in chief orally in San Francisco, Cal., was by me sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth relative to the said cause; and thereupon, in answer to cross-interrogatories proposed by counsel for defendants and propounded by me, the said Francisco Torres testified as follows:

1. Cross-question. In answer to question 17 in your direct examination you said that El Rosario mine was never worked by La Abra Mining Company. On what grounds did you make that statement?

Answer. I was there myself.

2. Cross-question. In answer to question 20 in your direct examination you said that those gentlemen (Del Valle and Manjarrez) lost about $40,000 from working La Luz mine. On what grounds did you make that statement and within what dates was that loss suffered?

Answer. I know because I was working for them there at the smelter. It was during the two years just prior to the sale of the business by them to the American company.

3. Cross-question. In answer to question 21, in your direct examination, you said that El Rosario mine yielded three marcos to the carga, and that the others did not yield anything. The others were the Luz, El Cristo, and El Arrayan. What did you mean by the statement that these mines did not yield anything, and to what time did you refer?

Answer. I mean that the other mines did not yield anything because they had no good ore. The time was before and after the sale also. After the sale they dug out 8 000 or 10,000 cargas of rock of no value.

4. Cross-question. In answer to question 24, in your direct examination, you said that La Abra Company worked La Luz and El Cristo only. On what grounds did you make that statement and what personal knowledge have you as to the mines from which La Abra Company took ores or as to the quantities of ores extracted or beneficiated by the company?

Answer. I make the statement because I was living there at the time and knew what was going on, and saw the mules and men going from the mine. La Abra Company worked a small amount of ore from El Cristo. That taken out of La Luz was not good and was piled upon the ground.

5. Cross-question. Were you ever in any of the company's mines while it was in operation at Tayoltita? If so, when, with whom, and in what mine or mines.

Answer. No.

6. Cross-question. In answer to question 42, in your direct examination, you said that you saw the ores left there (at Tayoltita) after La Abra Company ceased working, and that the ores still exist there; and in answer to question 45 you said that the ores were left in the patio of the hacienda. Please state when you were last at Tayoltita and when you last saw those ores or tepetate and about how much there was of them at that time.

Answer. I was there last June or July, but did not pay attention to the amount of ore or tepetate.

7. Cross-question. In answer to question 60, in your direct examination, you said that you did not believe that Scott or Scotty was ever robbed, because no robbery ever took place at Tayoltita. Please state what kind of robbery you meant, and how you knew there never was a robbery at Tayoltita.

Answer. I was there and never heard of any robbery taking place.

8. Cross-question. In your answers to questions 65, 66, 67, and 68, in your direct examination, you spoke of a small bar of silver which was offered for sale to Mr. Rice by Don Santiago Granger after El Mudo had left the mines. Please state as near as you can recollect what was the weight of the bar, and whether Mr. Rice bought it, and if so, what he gave for it.

Answer. I was there working, but did not know the weight of the bar. Mr. Rice bought it, but I do not know what he gave for it.

9. Cross-question. What, if anything, was said by Granger to Rice in your hearing on that occasion in regard to the particular ores from which, or the time when, the bar of silver had been reduced?

Answer. I did not hear Granger say anything about what mine the bar was from.

10. Cross-question. Why did you say in answer to question 83, in your direct examination, that you were certain that El Mudo had no relations of any kind with Mr. Mora?

Answer. I know there were no relations between them, because Mora was living at San Dimas, and was jefe politico there, and El Mudo was at Tayoltita.

11. Cross-question. Did you simply mean that you did not know of any relations between them?

Answer. I never knew of any relations between them and never saw Mora at Tayoltita.

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12. Cross-question. Have you ever heard or read Mr. Mora's testimony, which was taken at Durango in 1872, before Judge Barraza, in regard to the claim of La Abra Mining Company against Mexico? Or of Mr. Chavarria's testimony, taken before the same judge in the same year, in regard to Mr. Mora's relations with El Mudo as superintendent of La Abra Company?

Answer. I never read either of them and never heard of them until in Washington, where I heard of the deposition of Mora.

13. Cross-question. Were you ever examined yourself by the authorities of the Mexican Government in regard to La Abra Company's property prior to your appearance as a witness at Washington in 1889; and if so, when and where, and what was done with your deposition?

Answer. No, sir.

14. Cross-question. Did you know or had you heard in 1870, 1871, 1872, 1873, or 1874, that a commission was in session at Washington to examine the claims of citizens of the United States against Mexico and of citizens of Mexico against the United States, and that La Abra Company had presented a claim against Mexico to that commission?

Answer. I did not.

15. Cross-question. Did you know that Granger was examined several times in court at San Dimas in 1871 and 1872 in regard to the affairs of La Abra Company?

Answer. I did not know of it.

16. Cross-question. Do you know of any reason why your testimony was not or could not have been taken and submitted to the claims commission while in session at Washington?

Answer. I do not know of any.

17. Cross-question. Did you know Ralph Martin; and if so, please state when he arrived, what position he held, and how long he resided in San Dimas.

Answer. I know Ralph Martin; he was superintendent of the mines; I worked for him. He lived in San Dimas about two years, but I do not know when he arrived there. He was successor of Mr. Rice.

18. Cross-question. Did Ralph Martin employ Santiago Granger as bookkeeper; and if so, at what time or how soon after El Mudo left?

Answer. Mr. Martin employed Granger as bookkeeper about two years after Mudo left.

19. Cross-question. Who succeeded Mr. Ralph Martin as superintendent of Durango Mining Company at San Dimas?

Answer. Charles Dahlgren.

20. Cross-question. Was Maria Cecilia Jimenez related to Guadalupe Soto or his wife; and if so, in what way?

Answer. She was his stepdaughter.

21. Cross-question. What relations, if any, existed between Maria Cecilia Jimenez and Santiago Granger?

Answer. Maria Cecilia Jimenez was Santiago Granger's mistress.

22. Cross-question. Were these relations maintained at San Dimas as well as at Tayoltita; and if so, how long?

Answer. At both places and for a long time—almost until Mr. Granger's death.

23. Cross-question. Did you ever see or hear of any of the books or papers of La Abra Company after El Mudo left; and if so, where and when for the first time, and where and how often thereafter?

Answer. I did not.

24. Cross-question. Did you ever see El Mudo's letter of February 26, 1868, to Granger? If so, when and where for the first time, and where and how often afterwards?

Answer. I did not.

25. Cross-question. Did you have any conversation or correspondence with Santiago Granger in November or December, 1877, or in January, 1878, in regard to those books and papers of La Abra Company? If so, please state where and what the conversation was, and hand any letters you received from him on that subject or in any way concerning La Abra Company to the consul, that it may be attached to your deposition.

Answer. I did not.

26. Cross-question. Do you know or have you ever heard where or in whose custody those books and papers of the company, or any of them, were after El Mudo left Tayoltita in 1868 until they were delivered in 1877 and 1878 to the Mexican Government? Please state fully any information you may have on this subject.

Answer. I do not know, but suppose they were in Mr. Granger's custody, because he succeeded El Mudo.

27. Cross-question. What induced you to denounce and work La Luz mine after Del Valle and Manjarrez had lost, as you say, $40,000 in working it and La Abra Company had abandoned it?

Answer. I was induced to denounce it by Santiago Granger. Granger and I denounced it together, and I lost $9,000 in it and he lost nothing.

28. Cross-question. When you worked El Rosario Mine in connection with La Luz, at the time you were in partnership with Granger, did you pump the water out or work above the water level?

Answer. I did not pump the water out, and only worked a little above the water level.

29. Cross-question. When did you denounce La Luz mine?

Answer. I can not state here, but could tell by my books, which are at home.

30. Cross-question. How long did you work it?

Answer. About three years.

31. Cross-question. Where did you live during that time?

Answer. I was living at the reduction works at Tayoltita.

32. Cross-question. How often were you at the company's hacienda during that time?

Answer. I was living there at the hacienda.

33. Cross-question. If you were living at the company's hacienda during that time, or a portion of that time, who was living there with you?

Answer. My servant, cooking for me.

34. Cross-question. Where was Granger living at that time?

Answer. A part of the time he was living in a store which he had at San Dimas, and then he moved to San Vicente, where he had a mine.

35. Cross-question. When and how long did Somera live at the company's hacienda?

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Answer. I can not state the date, but Somera denounced it and lived there about two or three years.

36. Cross-question. How much farther must the tunnel in La Abra mine on which Manjarrez was working before his death be extended in order to reach the shafts or old veins?

Answer. I do not know, but think about 50 meters.

37. Cross-question. What makes you think that Manjarrez spent as much as $70,000 in tunneling La Abra mine?

Answer. Because he told me so, and also from my acquaintance with the work.

38. Cross-question. About what time did Manjarrez commence to tunnel La Abra mine; how long was he at work, and about how many men did he employ in tunneling the mine?

Answer. I do not remember when he commenced He worked between two and three years, working about seven men in the daytime and six at night during all the time.

39. Cross-question. When and where did he die?

Answer. He died in Durango, about the first of this year.

40. Cross-question. What was the reputation of Manjarrez in San Dimas district as a miner, for practical knowledge and skill?

Answer. His reputation was good as a miner.

41. Cross-question. Do you know Alfred A. Green, who was at the San Luis mine, in the district of San Dimas, in 1868; and, if you know him, how long have you known him, and have you had any conversation with him in regard to La Abra Company's claim against Mexico or in regard to giving testimony against the company?

Answer. I know him very well, but never had any conversation with him on this subject.

42. Cross-question. If you shall say in answer to the last cross-question that you have had any conversation in regard to La Abra Company with Alfred A. Green, please state when and where and what was the substance of such conversation.

Answer. I never had any such conversation.

43. Cross-question. While Santiago Granger held the relations to the daughter of Guadalupe Soto's wife to which you referred in your examination at Washington, did he (Granger) live at Soto's house any part of the time?

Answer. He did.

44. Cross-question. How often did you see Soto or Granger at Tayoltita after El Mudo left, in February or March, 1868, and before you commenced to work in La Luz and El Rosario mines under your arrangement with Granger, and at that time where were Soto and his family living?

Answer. Quite often, but I can not say how many times. Soto and his wife were then living at Tayoltita.

45. Cross-question. What mine or mines is Antonio Galarza now working at Tayoltita?

Answer. The Guadalupe mine; not any other.

46. Cross-question. In answer to question 116 in your direct examination you say that Granger remained nearly a year at Tayoltita after El Mudo left. Are you sure he remained so long?

Answer. I am sure.

47. Cross-question. Where did he live, and where were Guadalupe Soto and his family living during that time; that is, the first year after El Mudo left?

Answer. Granger lived at the hacienda and Guadalupe Soto in a small house about 20 yards away.

48. Cross-question. When and to what place did Guadalupe Soto and his family remove from Tayoltita?

Answer. They went to San Dimas and they lived there a long time, but I do not remember when they went.

49. Cross-question. You said in your testimony at Washington in 1889 that Soto lived at Tayoltita "until there was no hope or expectation of the mine." Was he at Tayoltita when you began to work La Luz mine or when Manjarrez began to tunnel La Abra mine?

Answer. When I began to work at La Luz Soto was at San Dimas, and he was also at San Dimas when Manjarrez began to tunnel La Abra.

50. Cross-question. In answer to question 127 in your direct examination you stated that you could not say that you had seen any of La Abra Company's books in Granger's possession while he was living at San Dimas. Did you ever hear him speak of the books or papers of the company; and, if so, what did he say about them?

Answer. I never heard him say anything about them.

51. Cross-question. Did you know or did you ever hear whether he brought them with him to San Dimas from Tayoltita?

Answer. I did not know anything about it.

52. Cross-question. Did you ever see any of the books or papers of the company at its hacienda or elsewhere in Tayoltita or San Dimas? If so, what were they, in whose possession were they, and when and how often did you see them?

Answer. I never saw them any place.

53. Cross-question. At or about the time when Granger was examined at San Dimas before Judge Quiroz, in 1871 and 1872, in regard to the affairs of La Abra Company, do you recollect whether anything was said by him, or whether there were any remarks by others, in regard to the books or papers of the company which had been left by El Mudo in the company's hacienda at Tayoltita?

Answer. I do not remember of anything being said about them.

54. Cross-question. Did you know or hear at the time, that is, in the year 1873, that Granger had El Mudo's letter of February 26, 1868, to him translated from English into Spanish by Fredrick Sundell in court at San Dimas?

Answer. I did not know or hear anything about it.

55. Cross-question. Was it generally known in Tayoltita or in San Dimas that the company's books and papers had been left with its other property at the mines, and were in the possession of Granger or others in that mining district?

Answer. I never heard in whose possession the books were left.

56. Cross-question. Did you intend by your answer to question 47 in your direct examination to include Granger among the superintendents of La Abra Company?

Answer. I did.

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57. Cross-question. You were on intimate terms with Granger, were you not?

Answer. Yes, sir.

58. Cross-question. Did you ever know or hear of Granger corresponding with the company or with any of its officers in New York after El Mudo left?

Answer. I did not know anything about it.

59. Cross-question. Did Granger ever show you or tell you about a letter he had from El Mudo transferring his authority to him?

Answer. No, sir.

60. Cross-question. Did you know or ever hear of a translation of that letter which Sundell made into Spanish for Granger before the translation which was made in court?

Answer. No, sir.

61. Cross-question. When you testified through an interpreter in 1889 at Washington, you were asked whether you were sure that Granger sold the wheel (of the company's mill) to Dahlgren, and the interpreter said, referring to you: "He is sure that the wheel was sold to Dahlgren by Granger because he was in close relation with Granger." Did you mean that you were in close relation with Granger or that Dahlgren was in close relation with Granger?

Answer. I was at the mill when the wheel was taken out, and I meant that I was in close relations with Granger.

62. Cross-question. Were you employed by Dahlgren's company at the time he got La Abra Company's wheel? If not, where were you employed at that time?

Answer. No; I was working for myself at that time.

63. Cross-question. When you said that Granger sold the wheel to Dahlgren, did you mean that Dahlgren paid Granger anything for it? If so, what did he pay?

Answer. I meant that it was sold, but I do not know what was paid.

64. Cross-question. Do you recollect whether Dahlgren got retorts or any other parts of machinery or apparatus of La Abra Company besides the wheel? If so, what were they, and when did he get them? How long after El Mudo left?

Answer. He got different pieces, but I do not know what they were.

65. Cross-question. Where was Fredrick Sundell, and how was he employed when Dahlgren got La Abra Company's wheel?

Answer. I do not know whether he was in San Dimas or California.

66. Cross-question. Were you and Sundell living at the Durango Mining Company's hacienda at that time, or were you mining at Tayoltita?

Answer. I was living at Tayoltita at that time. I do not know where Sundell was at that time.

67. Cross-question. Where did Judge Nicanor Perez reside when you were working La Luz mine; and, if he is not living now, when and where did he die?

Answer. He was living in San Dimas, and he is living now.

68. Cross-question. You said in answer to question 132 in your direct examination that you saw El Mudo about a month before he left Tayoltita. Was that before or after El Mudo had been imprisoned by Judge Perez?

Answer. I do not know that El Mudo was ever imprisoned.

69. Cross-question. You said in answer to question 135 in your direct examination that Granger told you that El Mudo was going to leave there for the purpose of raising funds either to work or pay the debts. Did Granger tell you at the same time or subsequently that he had been obliged to pay $50 to Judge Perez to get Exall out of prison?

Answer. He did not.

70. Cross-question. Did Granger tell you then or subsequently that Exall had been imprisoned in a pesthouse or building in which diseased people had been kept?

Answer. I never knew that Exall was imprisoned.

71. Cross-question. You testified in your examination at Washington that you had previously given a deposition in an investigation which the Mexican Government made to find out how the estate or property of La Abra Company had been destroyed, and that you did not remember the name of the judge who conducted the investigation, but that he was competent to conduct it. Can you fix the date of that investigation by any other circumstance within your recollection?

Answer. I can not fix the date.

72. Cross-question. Was it before or after Dahlgren took away the wheel of the company's mill, and how long before or after that time?

Answer. I can not tell when, but it was after Dahlgren took took away the wheel, and it was on account of that.

73. Cross-question. Was it while you were working in partnership with Granger, and, if afterwards, how long afterwards?

Answer. It was while I was working the mine; but Granger was not my partner at that time.

74. Cross-question. When was it that you denounced La Luz mine with reference to the time when you and Granger were working El Rosario in partnership?

Answer. It was at the same time Granger and I were working El Rosario. I only made one denouncement, which covered both El Rosario and La Luz.

75. Cross-question. If other witnesses were examined in regard to the destruction of the company's property at or about the same time you were examined on that subject, please state their names and the place where their testimony was taken.

Answer. I do not know of any others being examined at that time.

76. Cross-question. Do you know what was done with the deposition which you made on that occasion?

Answer. I do not.

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FRANCISCO × TORRES.
mark

Witnesses:

R. CASTILLOE.

LUIS VARQUER.

Deposition of Alexander K. Coney, for complainant, taken at San Francisco, Cal., on the 13th day of October, A. D. 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney-General; respondents' counsel, none.

ALEXANDER K. CONEY, having been duly sworn, testified as follows:

By Mr. LINES:

1. Question. Please state your name, age, residence, and occupation.

Answer. My name is Alexander K. Coney; my age is 49 years; I am consul-general of Mexico; residence, San Francisco, State of California.

2. Question. Mr. Coney, do you know anything of books purporting to have been kept by La Abra Silver Mining Company at its hacienda at Tayoltita, Mexico, from 1865 to 1868?

Answer. Yes, sir.

3. Question. What do you know concerning them?

Answer. I asked my Government to send them here to me.

4. Question. How and when did you ask?

Answer. I telegraphed for them on the 1st or 2d of October.

5. Question. Did you do this of your own motion, or request of anyone?

Answer. I did it at your suggestion.

6. Question. Did you receive those books?

Answer. I did.

7. Question. Have you them with you?

Answer. Yes, sir.

8. Question. When did you receive them?

Answer. On the 12th of this month.

9. Question. By whta means?

Answer. By Wells, Fargo & Co.'s Express.

10. Question. Please state whether or not the books in this box on the stenographer's table are the ones you refer to.

Answer. Those are the ones I refer to.

11. Question. Will you kindly open the box?

(The witness opens the box.)

12. Question. What is the first book, Mr. Coney?

Answer. It is labeled "Cashbook."

(The said book is now offered in evidence on behalf of the complainant, and marked "Exhibit No. 22. Alexander K. Coney. James S. Manley, commissioner.")

13. Question. What is the second book?

Answer. It is labeled "Record."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 23. Alexander K. Coney. James S. Manley, commissioner.")

14. Question. What is the third book?

Answer. It is labeled "Ledger."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 24. Alexander K. Coney. James S. Manley, commissioner.")

15. Question. Describe the binding of the three books that you have described as the "Cashbook," "Record book," and "Ledger."

Answer. They are bound in leather and red morocco.

16. Question. What is the fourth book, Mr. Coney?

Answer. It is the book of accounts.

17. Question. Are you familiar with bookkeeping?

Answer. Not any more than the ordinary bookkeeping. This seems to be a daybook kept in Spanish and English.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 25. Alexander K. Coney. James S. Manley, commissioner.")

18. Question. I will ask you, as you go along, to state the pages on which the first and last entries in these books appear?

Answer. Shall I go back to the first one?

19. Question. If you please, Mr. Coney.

Answer. Exhibit 22 commences on page 2 and ends on page 75. Exhibit 23 begins, outside of the index, on page 2 and ends on page 168. Exhibit 24 begins on page 1, outside of the index, and ends on page 180. Exhibit 25, this last one kept in English and Spanish, begins on page 1 and ends on page 125.

20. Question. What binding has this book, Mr. Coney, the twenty-fifth exhibit?

Answer. Pasteboard binding.

21. Question. What is the fifth book?

Answer. A blotter with a green leather back, pasteboard binding. The pages are not numbered.

22. Question. Please state the dates of the first and last entries.

Answer. April 1, 1867, is the first, and April 30, 1868, is the last.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 26. Alexander K. Coney. James S. Manley, commissioner.")

23. Question. What is the sixth book?

Answer. The next book has a black back and pasteboard binding.

24. Question. What is its character, as near as you can tell?

Answer. It seems to be a combined journal and daybook. The entries begin on the first page and end on the two hundred and fifteenth page.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 27. Alexander K. Coney. James S. Manley, commissioner.")

25. Question. What is the character of the seventh book?

Answer. Pasteboard binding with green leather back.

26. Question. What does that appear to be?

Answer. It is a ledger. It begins with the index on page 1 and ends on page 156.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 28. Alexander K. Coney. James S. Manley, commissioner.")

27. Question. What is the eighth book?

Answer. It has a pasteboard cover with a black back and is labeled "Ledger." Outside of the index it begins on page 1 and ends on page 175.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 29. Alexander K. Coney. James S. Manley, commissioner.")

28. Question. What is the ninth book?

Answer. It has a pasteboard binding with green back and seems to be a daybook kept in English. It begins on page 1 and ends on page 112.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 30. Alexander K. Coney. James S. Manley, commissioner.")

29. Question. What is the next book?

Answer. The binding has been torn off. It is a journal kept in English of La Abra Silver Mining Company, the first entry of which is dated October, 1865, commencing on page 3 and ending on page 47.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 31. Alexander K. Coney. James S. Manley, commissioner.")

30. Question. What is the next?

Answer. A paper-covered daybook kept in English. It is not paged. Labeled "Daybook," beginning July, 1866, and ending with an inscription partly destroyed by a hole in the paper, "Transf of December accounts to New York."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 32. Alexander K. Coney. James S. Manley, commissioner.")

31. Question. What is the next?

Answer. A paper-covered book labeled "Blotter. December, 1866."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 33. Alexander K. Coney. James S. Manley, commissioner.")

32. Question. What is the next?

Answer. A paper-covered book labeled "Daybook, May and June, Tayoltita, June 1, 1866."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 34. Alexander K. Coney. James S. Manley, commissioner.")

33. Question. What is the next?

Answer. A paper-covered book. It seems to be a tally of the miners.

34. Question. What is its condition?

Answer. It is in a bad condition. It is soiled and torn and some of the leaves are loose.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 35. Alexander K. Coney. James S. Manley, commissioner.")

35. Question. What is the next?

Answer. A paper-covered book labeled "La Abra Silver Mining Company, blotter for the month of February, 1867."

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 36. Alexander K. Coney. James S. Manley, commissioner.")

36. Question. What is the next?

Answer. A paper-covered book which purports to be a tally of the miners working in the mine.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 37. Alexander K. Coney. James S. Manley, commissioner.")

37. Question. What is the next?

Answer. A paper-covered book marked "Rationbook for 1867," and it seems to be a tally book also.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 38. Alexander K. Coney. James S. Manley, commissioner.")

38. Question. What is the next?

Answer. It is a book of four fragments, without a cover, it seems to be a cashbook.

(The said fragments are offered in evidence on behalf of the complainant, fastened together by the commissioner, and marked "Exhibit No. 39. Alexander K. Coney. James S. Manley, commissioner.")

39. Question. What is the next?

Answer. A paper-covered book which seems to be a memorandum of the record of ores of La Abra Silver Mining Company, beginning October 6, 1865. The last page follows that of the year 1867.

(The said book is now offered in evidence on behalf of the complainant and marked "Exhibit No. 40. Alexander K. Coney. James S. Manley, commissioner.")

40. Question. What is the next?

Answer. A statement of the cash account labeled "Explanatory of the credit side of May act. in cashbook."

(The said statement is now offered in evidence on behalf of the complainant and marked "Exhibit No. 41. Alexander K. Coney. James S. Manley, commissioner.")

41. Question. What is the next?

Answer. One sheet of four pages. It seems to be a trial balance.

(The said sheet is now offered in evidence on behalf of the complainant and marked "Exhibit No. 42. Alexander K. Coney. James S. Manley, commissioner.")

42. Question. What is the next?

Answer. A sheet of four pages, which also seems to be a trial balance.

(The said sheet is now offered in evidence on behalf of the complainant and marked "Exhibit No. 43. Alexander K. Coney. James S. Manley, commissioner."

43. Question. What is the next?

Answer. A half sheet of two pages. It seems to be a list of accounts.

(The said half sheet is now offered in evidence on behalf of the complainant and marked "Exhibit No. 44. Alexander K. Coney. James S. Manley, commissioner.")

44. Question. What is the next?

Answer. A sheet of four pages of journal entries, dated March, 1868, to April, 1868.

(The said sheet is now offered in evidence on behalf of the complainant and marked "Exhibit No. 45. Alexander K. Coney. James S. Manley, commissioner.")

45. Question. What is the next?

Answer. A paper cover containing a list of accounts.

(The said paper cover is now offered in evidence on behalf of the complainant and marked "Exhibit No. 46. Alexander K. Coney. James S. Manley, commissioner.")

46. Question. What is the next?

Answer. A torn sheet of a page and a half, containing a pencil memorandum of accounts.

(The said torn sheet is now offered in evidence on behalf of the complainant and marked "Exhibit No. 47. Alexander K. Coney. James S. Manley, commissioner.")

47. Question. What is the next?

Answer. A memorandum in Spanish headed "Dernadino Romero."

(The said memorandum is now offered in evidence on behalf of the complainant and marked "Exhibit No. 48. Alexander K. Coney. James S. Manley, commissioner.")

48. Question. What is the next?

Answer. A memorandum of payments made to different people, in English.

(The said memorandum is now offered in evidence on behalf of the complainant and marked "Exhibit No. 49. Alexander K. Coney. James S. Manley, commissioner.")

49. Question. What is the next?

Answer. A receipt by A. B. Elder for lumber received. That is all.

(The said receipt is now offered in evidence on behalf of the complainant and marked "Exhibit No. 50. Alexander K. Coney. James S. Manley, commissioner.")

50. Question. Those are all the books and papers received by you yesterday?

Answer. Yes, sir.

51. Question. In whose possession have they been since you received them?

Answer. In mine.

52. Question. Were they in the same condition when you received them?

Answer. Exactly; and in the same box.

53. Question. Do you know anything further in relation to the matters in question to this suit?

Answer. No, sir.

ALEXANDER K. CONEY.

Deposition of Ladislao Gaona, for the United States, taken at San Francisco, Cal., on the 13th and 15th days of October, 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney-General; respondents' counsel, none.

LADISLAO GAONA, having been duly sworn, testified, through Thomas M. Jewett, interpreter, as follows:

By Mr. LINES:

1. Question. What is your name, age, residence, and occupation?

Answer. My name is Ladislao Gaona; I am 62 years of age; my profession is that of a lawyer; I reside at present at Concordia, in the State of Sinaloa, Mexico.

2. Question. Mr. Gaona, what was your occupation in the years 1877 and 1878?

Answer. During those years I was performing the duties of district attorney for the district and circuit courts of the State of Sinaloa.

3. Question. Under appointment from whom?

Answer. Appointed by the Executive at the suggestion of the supreme court.

4. Question. The executive of the State or the Republic?

Answer. By the Executive of the nation.

5. Question. Were you acquainted with Mr. Vallarta, the minister of foreign relations at that time?

Answer. Yes, sir; I knew him at that time and knew him for a great many years prior thereto. I knew him when we were children. He was a personal friend of mine, and both went to the same college.

6. Question. Did you, in your official capacity, have anything to do, in the years 1877 and 1878, with securing certain books and papers said to be the property of La Abra Silver Mining Company?

Answer. Yes, sir; I recollect that very distinctly, and I still have in my charge and possession several documents relative to the transaction. I made every effort in my power until I succeeded in obtaining possession of the books and papers.

7. Question. At whose direction did you make those efforts?

Answer. By the directions and orders of Mr. Vallarta, the minister of foreign relations.

8. Question. From whom did you secure the books and papers you refer to?

Answer. From one James Granger, who was the bookkeeper and the possessor of those books.

9. Question. How did you first learn that those books were in Granger's possession?

Answer. By Mr. Granger himself and other parties who informed me they were in the possession of Mr. Granger and I could obtain possession of the same.

10. Question. Where was Granger living at that time?

Answer. He was then living in Mazatlan, at the house of Mr. William Miller.

11. Question. Who were the other parties besides Granger who spoke to you of his having these books?

Answer. A gentleman by the name of Symon, who gave me that information in writing.

12. Question. Are you familiar with the handwriting of James Granger?

Answer. I am.

13. Question. Look at this document which I now hand you, dated Mazatlan, June 8, 1877, addressed to Robert R. Symon, Culiacan, without signature, and state in whose handwriting it is?

Answer. It is in the handwriting of Mr. Granger himself.

(The said document is now offered in evidence on behalf of the complainant and marked "Exhibit No. 51. Ladislao Gaona. James S. Manley, commissioner.")

14. Question. How did this document come into your possession?

Answer. It was transmitted to me by Mr. Granger himself (it is a copy of a letter which he sent to Symon), in order that I should inform myself of its contents.

15. Question. Did he tell you he had sent a copy to Mr. Symon?

Answer. I have no recollection of that. Very likely he did.

16. Question. Had you, at the date of that letter, ever seen Mr. Alfred A. Green?

Answer. I do not recollect the date when I saw Green. I saw him about that time. Very likely it was after the 8th of June, 1877.

17. Question. Before you heard of this matter from Mr. Granger had you heard of it from Mr. Green?

Answer. No, sir; I had known Mr. Green some two or three years before. He was then in the military service of Mexico.

18. Question. Where did Mr. Symon live at this time?

Answer. He had no fixed residence at that time. His real residence was in England, but by reason of his business relations he used to come to the Republic of Mexico frequently.

19. Question. What was his business?

Answer. He had business in a great many branches, railroad concessions, and also in relation to concessions of public lands. He used to come to Mazatlan and Culiacan. He had business transactions in Culiacan.

20. Question. Do you know what his nationality was?

Answer. My belief is that he was an English subject.

21. Question. Did you enter into negotiation with Granger for the delivery of the books of La Abra Silver Mining Company?

Answer. I did, sir; by order and instructions from the department of foreign relations, upon the offer being made that the books should be delivered by a payment of $3,500.

22. Question. Please look at the telegram I now hand you, dated Mexico, August 29, 1877, addressed "C. L. Gaona" and signed "Y. L. Vallarta," and state whether or not you recognize that.

Answer. I recognize the telegram as having been received by me.

(The said telegram is now offered in evidence on behalf of the complainant and marked "Exhibit No. 52. Ladislao Gaona. James S. Manley, commissioner," and the translation of the same made by the interpreter is as follows:)

[Telegraphs of the Federal Government.—Telegram.—Deposited in Mexico on the 29th of August, 1877, and received at Mazatlan on the 31st of the same month, 1877, at 9 o'clock and 22 minutes a. m.]

"C. L. GAONA: I received your telegram of the 24th. What amount does Granger ask for delivery of the books of the Abra at the court of the district? Whatever is to be paid to him in relation to this will not be paid until these books have been delivered. I am awaiting your answer in order that I may decide.

"Y. L. VALLARTA."

23. Question. What arrangement did you make with Granger under your instructions with Mr. Vallarta?

Answer. An instrument was executed before the district court whereby he agreed to deliver all the books and papers belonging to the company upon the condition that he should be paid the sum of $3,500 and that this

payment should be made upon the condition that Mexico should be exonerated from the payment of the claim made against Mexico by the Abra Mining Company.

24. Question. Have you that instrument with you?

Answer. No, sir; it was filed in the district court and from the original copies have been made, one of said copies to be delivered to Mr. Granger for his own security, and I believe that another copy was made for the department of foreign relations.

25. Question. Have you a copy of that instrument with you?

Answer. No, sir; I have not.

26. Question. Could you get a copy certified by the court at Mazatlan?

Answer. I believe I can.

27. Question. What did Granger first do under his agreement.

Answer. He went to San Dimas for the purpose of taking possession of the books and the papers.

28. Question. Did you go with him?

Answer. I did not.

29. Question. Why did you not go with him?

Answer. Because I was going there for the purpose of examining certain witnesses, but in consequence of certain circumstances which arose it did not become necessary for me to go with him.

30. Question. Did anybody else go with him representing the Government of Mexico?

Answer. Nobody went with him.

31. Question. Look at the telegram which I now hand you, dated Mexico, September 17, 1877, addressed C^{o}Lic. Gaona, and signed Vallarta, and state if you recognize it?

Answer. I examine the telegram and recognize the same.

32. Question. Did you receive that telegram?

Answer. I now recollect that I did, because I have seen it, and by reason of an answer which is written on the same telegram by myself.

(The said paper is now offered in evidence on behalf of the complainant and marked "Exhibit No. 53. Ladislao Gaona. James S. Manley, commissioner," and the translation of the same made by the interpreter is as follows:)

[Seal of the Telegraph Office of the Supreme Government.—Telegram.—Deposited in Mexico on the 17th of September, 1877.—Received in Mazatlan on the 21st instant, at 4.45 p. m.]

"Citizen Licentiate GAONA: I have received your telegram of the 9th. We have got judicial translation of the autograph of Exall inserted in the same, made by Sundi. How much does Granger want for that autograph? On the 29th last I stated to you: 'What amount does Granger want for the delivery of the books of the Abra at the court of the district?' Whatever is to be paid to him will not be paid until he has delivered the autograph and the books. I await your answer in order to decide.

"VALLARTA.

SEPTEMBER, 22, 1877.

"Telegram of the 17th received. Granger answers to-day what he stated before, that he will deliver the books of the Abra Company and the autograph of Exall if he is paid the $3,500 which is due him by the

company, as he stated in telegram of the 31st of August, which I believe you have received, and if it is desirable he can produce five or six depositions of reliable Americans, such as Sundell. Galan is residing for the present in Culiacan. Shall I make application in order that he may acknowledge his declaration before the judge of that city, or shall I wait until he comes? Pancho (Frank) is weary, and even sick."

(An adjournment was here taken until Monday, October 15, 1894, at 10 o'clock a. m.)

MONDAY, *October* 15, 1894.

Examination of LADISLAO GAONA resumed.

Mr. LINES:

33. Question. To what do the words "inserted in the same" in the telegram from the minister to you refer?

Answer. It refers to the telegram.

34. Question. What do the words "the same" mean?

Answer. It relates to the telegram.

35. Question. From whom to whom?

Answer. To the best of my understanding, it relates to the telegram which I sent on the 9th of September, 1877.

36. Question. Did you telegraph to the minister a copy of Exall's autograph on the 9th of September?

Answer. I am unable to answer anything else than that which appears upon this telegram; I am unable now to recall those facts.

37. Question. Please look at the letter which I now hand you, dated Mexico, October 2, 1877, written in Spanish, and signed Y. L. Vallarta, and state by whom it is signed and whether you received it?

Answer. I recognize the letter as having been signed by Y. L. Vallarta, who was then the minister of foreign relations, addressed to me and received by me.

(The said letter is now offered in evidence on behalf of the complainant, marked "Exhibit No. 54. Ladislao Gaona. James S. Manley, commissioner," and a translation of the same, made by the interpreter, is herein inserted, as follows:)

"MEXICO, *October* 2, 1877.

"Señor Licentiate DON LADISLAO GAONA,
"*Mazatlan.*

"DEAR FRIEND: I am in receipt of your favor dated the 7th of September last, and your message of the 26th of the same month, and, being advised of its interesting contents, I now answer as follows:

"The $3,500 will be given to Granger, that being the amount which he asks for the delivery of the books of the Company La Abra, the autograph of Exall, and other proofs which he offers if the complete exoneration of Mexico is obtained concerning the payment of the indemnity awarded to the company; and if, independent of this eventual compensation, he wants another more immediate moderate compensation, let him fix it, and advise, in order that I may decide.

"By the next mail I will remit to you official instructions in respect to the depositions of Galan and other witnesses. I do not write to you more extensively now because I feel somewhat indisposed. I will do so soon.

"Your affectionate friend, who wishes you happiness and wishes you well,

"Y. L. VALLARTA."

38. Question. Please look at the paper which I now hand you and state what it is.

Answer. It is a telegram from Mr. Vallarta, dated Mexico, November 14, 1877, addressed to me and received by me.

39. Question. What is the indorsement?

Answer. It is my reply to him in my own handwriting, and signed by me.

(The said paper is now introduced in evidence on behalf of the complainant, and marked "Exhibit No. 55. Ladislao Gaona. James S. Manley, commissioner," and a translation of the same made by the interpreter is herein inserted, as follows:)

[Telegraphs of the Federal Government.—Telegram.—Deposited in Mexico on the 14th of November, 1877, and received in Mazatlan on the 16th of the same month, 1877, at 12 o'clock 30 minutes a. m.]

"Señor Licentiate L. GAONA: If the three thousand and five hundred dollars are not to be paid to the person in question except in case that the Government shall be definitely exonerated from paying the indemnification granted by the umpire to the new Company La Abra, proceed to close the agreement which you mentioned in your letter of the 24th ultimo, as having been arranged with the said party. Please act in the whole of this matter with great caution.

"VALLARTA.

"NOVEMBER 16, 1877.

"I received to-day telegram of the 14th. I am about to write to Granger, who is now in San Dimas, assuring him that his propositions are approved upon the agreed condition of exoneration. I also assure him that the $500 will be given him for expenses, although you do not say anything to me on the subject.

"L. GAONA."

40. Question. Please look at the paper which I now hand you and state what that is.

Answer. It is a letter written and signed by Y. L. Vallarta, dated Mexico, November 14, 1887, and addressed to me, and a copy of my reply to the same, dated December 3, 1877, in my own handwriting.

41. Question. And the portion of the reply in pencil, what is that?

Answer. It is my reply, which was originally written in pencil and subsequently written in ink.

42. Question. Are the parts in pencil and parts in ink the same?

Answer. They are the same. That which is written with ink comprehends that which was written with pencil.

(The said letter is now offered in evidence on behalf of the complainant and marked "Exhibit No. 56. Ladislao Gaona. James S. Manley, commissioner," and a translation of the same made by the interpreter is herein inserted, as follows:)

"MEXICO, *November* 14, 1877.

'Senor Licentiate DON LADISLAO GAONA,

"*Mazatlan.*

"DEAR FRIEND: I answer your favor of the 25th of October past. Referring to it I sent to you a telegram authorizing you to carry into effect the agreement which you tell me you had arranged with Granger provided he agrees in receiving the $3,500 only in case that the Government shall be definitely and completely exonerated from the payment of the indemnification awarded by the umpire of the mixed commission to the Abra Mining Company, because in your letter you only inform me that Granger agrees to receive the said $3,500 for the delivery of the books, autograph of Exall, etc., of the company, and not if he accepts the condition that that sum shall be given him only in the event that Mexico be exempted from paying such indemnification. Therefore, upon the said express condition you can effect said agreement. In regard to the arrangement that you made concerning the $500, the same is approved, and you can deliver the same in the form suggested; that is to say, one-half at once and the other until you have in your possession the books and other documents. I have to request you again that in the whole of this matter you will act with a great deal of caution, because Granger is not a man in whom you can place reliance; but on the contrary, he appears to be very dangerous.

"Wishing you happiness, I remain your affectionate friend, etc.,

"Y. L. VALLARTA.

"Very soon, that is to say, within two or three days, the minister of justice will consider the matter relative to appointment of judges in Lower California. I have again spoken to him concerning your wishes and he has offered me the appointment relative to the Mulege judgeship. Very soon I will be able to communicate to you the result of this matter.

"DECEMBER 3, 1877.

"I have received and now answer your favor of November 14 last, which I received by the last mail. I have definitely arranged our agreement with Granger, and in order that he may have a voucher or document I have submitted a statement in reference to the stipulated conditions to the district court, which will remain on file there and a certified copy thereof will be issued to him. Granger is disposed to produce the witnesses at the Noria, San Ygnacio, and San Dimas, and to bind them to testify upon such terms as will be arranged by common agreement beforehand; also to send me points in respect to the interrogatories, which I will duly frame and will send officially to the judicial authorities of the places, and with this our proofs will be complete. Furthermore, he is disposed to proceed to San Francisco, where, he says, he will be able to obtain three or four very important depositions of reliable witnesses, but in order to do this we must in due time make an estimate of the mileage and other expenses which must be paid by the Government. In this connection I will state that I did not have more than $400 in cash. In order, therefore, to pay Granger in full I will need $100 additional. The rest, as I have already explained to you, has been expended, and I will produce vouchers for the same; portions of it I have taken because I did not

receive one month's salary in due time. This amount can be charged to the account of my salary which is due me, if you deem it advisable.

"I remit to you the autograph of Exall, delivered to me this day, which can be acknowledged at his place of residence, which I believe is San Francisco.

"The books are now on their way and will arrive here soon. I will examine them and ask you for instructions by telegraph."

43. Question. Please look at the letter which I now hand you, dated San Dimas, 25th of November, 1877, addressed "L. Gaona, esq., Mazatlan," and signed "James Granger," and state in whose handwriting it is, by whom signed, and whether the same was received by you.

Answer. It is a letter from Santiago Granger, which I received. It is in his own handwriting and signed by him. I am familiar with his handwriting.

(The said letter is now offered in evidence on behalf of the complainant and marked "Exhibit No. 57. Ladislao Gaona. James S. Manley, commissioner.")

44. Question. Is the autograph letter which you remitted to the minister on the 3d of December the same to which Granger refers in this letter?

Answer. In all probability it is.

45. Question. Please look at the paper I now hand you, written in Spanish, and state what it is.

Answer. It is a letter written at San Dimas, dated December 25, 1877, by Santiago Granger, in his own handwriting, addressed to me and received by me.

(The said letter is now offered in evidence on behalf of the complainant and marked "Exhibit No. 58. Ladislao Gaona. James S. Manley, commissioner," and a translation of the same made by the interpreter is herein inserted, as follows:)

"SAN DIMAS, *December* 25, 1877.

"Señor DON L. GAONA,
"*Mazatlan.*

"MY DEAR SIR: Since my arrival here I have endeavored to find the books of accounts of La Abra, but I have not been able as yet to find one or two, but I still continue in making search for them. I have found, however, a letter-copy book and some private letters which I deem of great importance, and I therefore send them by to-day's mail. All of them are in the English language, but you can have them translated.

"I have nothing more to communicate for the present, and I remain, as ever,

"Your affectionate friend, etc.,

"SANTIAGO GRANGER."

46. Question. Mr. Gaona, did you receive the letter-copy book and the letters to which that letter of Granger refers?

Answer. Yes, sir; I received them.

47. Question. What were the letters?

Answer. I have no recollection now of the character of those letters.

48. Question. What did you do with those letters and that letter-copy book?

Answer. I transmitted them to the minister of foreign relations.

49. Question. Did you make any memorandum when you transmitted them?

(Witness examines memorandum.)

Answer. Yes, sir; I did, and I preserved the memorandum.

50. Question. Now, what letters were they?

Answer. There were eight letters from David F. Garth to Charles H. Exall and four letters from Exall to Granger. Those are the only letters.

51. Question. About what time did you send these letters and the letter-copy book to the minister of foreign relations?

Answer. According to my memorandum, on the 2d day of January, 1878.

52. Question. Did you, after transmitting the press-copy book and the twelve letters, receive any other books from Granger?

Answer. Yes, sir; I recollect that I received afterwards the whole set of books belonging to La Abra Company.

53. Question. How did you know they were the whole set?

Answer. Because I examined the books and in them I found the ledger and the principal books belonging to the company which formed the whole set, according to my understanding, not being familiar with the English language.

54. Question. About what time did you receive those books?

(Witness examines another memorandum.)

Answer. According to my memorandum, these books received by me were received on the 24th of January, 1878.

55. Question. What did you do with them?

Answer. According to the instructions which I had previously received, I sent them by steamer to the minister of foreign relations, in the care of the collector of the port at Acapulco.

56. Question. Were these books, the letter-copy book, and the letters you have spoken of in the same condition when you sent them to the minister as when you received them?

Answer. Yes, sir; they were in the same condition. They were always in my possession.

57. Question. Did you receive and transmit to your Government any loose papers with the books?

Answer. I do not recollect.

58. Question. Were any depositions taken at that time, according to the proposition of Granger, to which you referred in your letter of December 3 to the minister?

Answer. According to the best of my information, I understand no depositions were taken.

59. Question. Please look at the document which I now hand you, and state what it is.

Answer. It is a letter from Y. L. Vallarta addressed to me, and dated Mexico, February 9, 1878, and received by me, in which he gives me instructions relative to the affairs of La Abra Mining Company. The latter portion of the letter is in the handwriting of Mr. Vallarta.

(The said letter is now offered in evidence on behalf of the complainant

and marked "Exhibit No. 59. Ladislao Gaona. James S. Manley, commissioner," and a translation of the same made by the interpreter is herein inserted, as follows:)

"MEXICO, *February* 9, 1878.

"Señor Licentiate DON LADISLAO GAONA,

"*Mazatlan.*

"MY DEAR FRIEND: I reply to your favor dated the 2d of January last, which duly came to hand, the same being registered with the documents to which you refer.

"If you can ascertain Mr. Exall's residence, do not fail to inform me as I have already requested you. Until now I am unable to answer your letter, because I have been engaged in deciphering the contents of the letter-copy book, the writing of which, by reason of its being almost imperceptible, has given a great deal of trouble to be understood. Nevertheless, an exact copy is now being taken from it and will be forwarded by the next steamer which will sail for the United States.

"The documents which you have obtained are of such probatory force that they show beyond a doubt the fraudulent nature of the claim of La Abra Company, and I therefore believe the deposition of Lagnel which you have offered will not be required, although it would be proper for you to make arrangements so that in case it should be needed hereafter this party may be able to furnish it.

"Considering that said documents are of great importance, I anticipate a favorable result against such an unjust and onerous claim. Some of said documents are already in Washington, and the remainder I will remit by the next steamer.

"In respect to the suggestions made to you by Granger in reference to greater compensation for his services, you can, without binding yourself in the least, state to him that the Government will give him something additional, provided the said Government shall be exonerated from the burden which, by reason of the said claim, rests upon the Republic.

"As to the granting of a pardon to him, you will understand that this can not be done unless he had first been declared guilty and sentence had been pronounced. But if this can not be granted to him, you can assure him that in view of the services which he has rendered, he will not be prosecuted criminally. In fact, it can not be denied that the services rendered by this party have been most important and will probably save Mexico from an unjust burden.

"As I believe that the proofs already obtained are sufficient to demonstrate the fraudulent nature of the said claim, I trust that you will not be required to render other services. I had already thought of paying a portion of the amounts advanced by you, and I therefore request you to inform me what sum will be sufficient to cover the expenses of clerk hire and others which you may have disbursed.

"I also wish to know the amount you desire as compensation as salary, and which you took from moneys which you had on hand to pay expenses for obtaining proofs.

"Upon receipt of your reply in reference to these two points I will see what can be done and will advise you.

"I received your other letter of the same date, the 2d of January, and copy of Granger's letter accompanying it.

"Pancho (Frank) has written to me, but notwithstanding, I thank you for the news concerning him which you have communicated to me. I trust you will enjoy good health, this being the wish of

"Your affectionate friend,

"Y. L. VALLARTA.

"P. S.—When you have occasion to speak with Granger in regard to the additional compensation which he asks, do it in such a way as you will not bind the Government to greater obligations. You can assure him, however, that the Government will know how to appreciate his good services. You will in any event do your best to treat him in such way so that he may be well disposed in case anything should be needed.

"In all likelihood, provision will be made very soon in respect to the judicial Federal appointments. It would be well for you to send me a petition to the department of justice requesting the appointment which you desire. I will endeavor on my own account to obtain the best results.

"Yours, affectionately,

"Y. L. VALLARTA."

60. Question. In that letter, reference is made to your offering the testimony of Lagnel. Did you know Mr. Lagnel?

Answer. I did make the offer, but I was not personally acquainted with that gentleman.

61. Question. How did you happen to offer his testimony?

Answer. Because the offer came from Mr. Granger.

62. Question. How did he tell you he could get the testimony of Mr. Lagnel?

Answer. Because at the time the delivery of the books and other documents belonging to La Abra Company was being considered he told me that he would be able to procure the depositions of various witnesses, and, among others, he mentions the name of this party, who he said was reliable and worthy of consideration.

63. Question. Where was Mr. Lagnel at that time?

Answer. According to the information which Mr. Granger gave me then, he stated that he was on board one of the steamers that were then running between San Francisco and China.

64. Question. Did you have any communication with Lagnel?

Answer. No, sir; none.

65. Question. Do you know whether Granger had?

Answer. I suppose he did, because both were employees of the same association, but I do not know.

66. Question. There is a reference in this letter, Exhibit 59, to an indulgence to Granger from criminal proceedings. Did you ever institute any criminal proceedings?

Answer. I did not institute any criminal proceedings against Granger, either as prosecuting attorney or otherwise.

67. Question. Did you institute criminal proceedings against anyone?

Answer. Yes, sir; I did, against other witnesses who were in the same condition as Granger was.

68. Question. Witnesses for whom?

Answer. In favor of the claimants and against the Mexican Government.

69. Question. Do you remember their names?

Answer. One was Loaiza, another Gamboa, and others whose names now I am unable to recall.

70. Question. Did you ever proceed against Galan?

Answer. No, sir; I received special instructions not to prosecute him.

71. Question. For what reason?

Answer. Because at that time he had just been elected Federal senator, and by virtue of the office he was exempt by the Federal laws from arrest, except by consent of the Senate.

72. Question. What became of the proceedings which you did institute?

Answer. Some of the parties were imprisoned, but as to their sentences I am unable to give any information for the reason that I then ceased being prosecuting attorney.

73. Question. When did you cease being prosecuting attorney?

Answer. Either in the month of July or August, 1878.

74. Question. What was the ground of these criminal proceedings?

Answer. They were based upon the crime of perjury committed by them in testifying falsely against the Mexican Government in this matter of La Abra.

75. Question. Do you know what has become of Loaiza?

Answer. I do not.

76. Question. Or of Gamboa?

Answer. One of the Gamboas, I am informed, resides at Panuco, State of Sinaloa.

77. Question. And the others?

Answer. Of the others I have no information.

78. Question. Would you recognize the books which you received from Granger on the 24th of January, 1878, if you were to see them now?

Answer. I think I would be able to recognize them.

79. Question. I show you the books introduced in evidence in the testimony of Mr. Coney.

Answer. I recognize at once the books marked Exhibits 22, 23, and 24 by their binding, and by examining the others I believe they are the same books, for the reason that they contain entries made in the handwriting of Granger. I believe they all constitute the set of books received by me.

80. Question. Do you remember to have received from Granger, or from any other person, any other books belonging to La Abra Company other than those you have just examined, marked Exhibits 22 to 40, inclusive, in the testimony of Alexander K. Coney, the consul-general, except the letterpress copy book?

Answer. No, sir; I have not.

81. Question. How far is your home from Mazatlan?

Answer. I reside at a place called Concordia, which is a distance of about 15 leagues from Mazatlan.

82. Question. When did you leave your home for San Francisco?

Answer. In the afternoon of the 7th of September last.

83. Question. And when did you arrive in San Francisco?

Answer. I arrived at San Francisco on the 14th of the same month at 8 o'clock in the evening.

84. Question. By what route did you come?

Answer. By water.

85. Question. At whose request did you come to San Francisco?

Answer. I came here at the request of the department of foreign relations.

86. Question. When do you return to Mazatlan?

Answer. Just as soon as I have finished rendering the services which brought me here.

87. Question. Do you know anything further relative to the matter of this suit of the United States *v.* La Abra Silver Mining Company?

Answer. I believe that everything that has been stated by me is all that I know. At least, I have no recollection that I can say anything further on the subject.

L. GAONA.

EXHIBIT No. 51—Ladislao Gaona—James S. Manley, commissioner.

MAZATLAN, *8th June*, 1877.

ROBT. R. SYMON, Esq.,
Culiacan.

DEAR SIR: Agreeable to your request, I submit a few points that would be available in the La Abra Case.

1st. Annexed is a slip cut from the N. Y. Weekly Tribune of 5th Jany., 1876, containing a telegram from Washington giving a report of the award in the La Abra Case by the umpire of $683,000, and stating that the principal ground of said award were two orders issued by the local authorities &c., &c. This is so strange that I can hardly credit it. The orders, or rather order, was issued by the gefe politico of San Dimas and the second order is from the local judge communicating the order of his superior. This order, as near as I can remember, said the company must work their mines or they would be taken from them and given to those who would. This is the principle by which all mines in Mexico are held, viz, working them in conformity with the ordenanzas de mineria, and am surprised that any attention should have been paid to these orders, as they contained only a threat which was never attempted to be carried into effect, and if they had attempted to carry their threat into effect the company could have demanded the protection of the courts, and it would have been granted. Can prove that no regard whatever was paid to these orders by the superintendent in charge, and the works of the company were never suspended by him for one moment on account of these orders, and that for at least four months, and I think six months, subsequent to the date of these orders the company carried on their works peaceably and without molestation.

2d. The company stated they abandoned the property in March, 1868. Will prove that Chas. H. Exall, supt., on leaving Tayoltita about 1st March, 1868, stated publicly that he was going to New York to consult with the company and would return in three or four months, and by a document dated 26 February, 1868, which is in my possession, he constituted me superintendent in charge of all the company's affairs, together with its property; and I continued such until the arrival of Genl. Adams in Tayoltita in May, 1870, when he said the company had abandoned the property, which was the first intimation received of the kind by me or any knowledge of any such proceeding being known in Tayoltita.

3rd. The company claim they were robbed of large teams of mules loaded with provisions and supplies. Will prove that the company, during all the time they were in Tayoltita, never possessed over ten mules, including saddle mules, the disposition of which can all be accounted for; that by the books there is no evidence of any provisions or supplies being lost. The only loss that appears in them is some $1,100, which occurred as follows: A man named Scott was sent to Mazatlan for money for the use of the company, and on his return to Tayoltita he was that amount short, which he stated he had been robbed of by some soldiers, but produced no evidence of the fact. This is the only positive loss I ever heard of or find mentioned in the books, and other employees of the company will certify to the same facts.

4th. The company state that they were robbed of large quantities of etal, were obliged to keep an armed guard, &c., &c. This is all false, and can prove it by every resident of Tayoltita. Seven-eighths of the metal extracted by the company from their mines now exists on the patio of the hacienda. By their own assays it only contains from 2 to 6 dollars in silver to the ton of rock, not sufficient to pay one-third of the cost of beneficio. Every pound of rock that would pay milling expenses was put through the mill.

These points cover all the ground on which the claim of the company is founded, but if I had the "expediente" before me and examined the testimony presented by the company, could rebut their evidence in detail. I have the books of the company in my possession, and was in their employ from 1866, and am thoroughly conversant with all their transactions and know from these records, as well as from personal knowledge, that they were never interfered with by the authorities, nor ever suffered any losses by robbery of mules or supplies, and was in charge of the business when Genl. Adams presented himself in May, 1870, stating that he came on behalf of the company to take testimony in support of their claim before the commission; that they had been driven out of the country by the acts of the Mexican authorities, and compelled to abandon their property which had cost so much money.

EXHIBIT No. 57—Ladislao Gaona—James S. Manley, commissioner.

SAN DIMAS, *25th Novr.*, 1877.

L. GAONA, Esq.,
Mazatlan:

Your esteemed favor of 17th inst. was received yesterday afternoon and contents noted.

Am very glad to learn that Minister Vallarta ratifies and confirms the agreement which you communicated to him in yours of 24 Novr., viz, $400 to be paid me in cash for costs and charges in taking the testimony of witnesses mentioned, except those residing in the United States, and if the Mexican should be exonerated from the reclamation of the La Abra Co., then I am to be paid a further sum of $3,500.

In this belief I write our mutual friend, Wm. Miller, esq., of Mazatlan, to arrange with you and have these stipulations embodied in a "documento

publico," and when signed and delivered to give you the autograph letter of Exall. The books of the Co. will forward by first courier; some are expected here from Mazatlan next week.

Have seen and arranged with three witnesses to give testimony, but find it absolutely necessary that I should have the book containing the printed testimony presented in the case. I require it to know the points on which it is most important to bring the weight of the testimony. I don't see how it is possible for you to frame a general interrogatory for all the witnesses. Can not you give me authority to frame a different set of questions as suited for each witness? It would save much time and annoyance to the witnesses, and the testimony, in my opinion, would be much more effective.

I remain, yours, very truly,

JAS. GRANGER.

You can forward the book of the printed testimony by mail.

Deposition of Ladislao Gaona on cross-interrogatories prepared by Mr. Kennedy, taken at the consulate of the United States of America, Mazatlan, Mexico.

1. Cross-question. In answer to question 9 in your direct examination you say that Mr. Granger himself and other parties informed you that the books of La Abra Company were in his possession. Who were the other parties? You named Symon as one. Please name them all.

Answer. At this moment I do not recall exactly who the parties were who informed me that the company's books were in the possession of Mr. Granger. I remember a certain Mr. William Miller with whom Mr. Granger lived; but further I can not say.

2. Cross-question. When, where, and from whom did you first learn that Granger had possession of La Abra Company's books and papers?

Answer. I first learned that Mr. Granger had the books and papers of the company in the year 1877, in Mazatlan, but I do not recall who told me of it.

3. Cross-question. What, if anything, had you to do with taking testimony for the Mexican Government against La Abra Company's claim while the Claims Commission was in session at Washington, say from 1870 to 1875? Please answer fully on this point.

Answer. I acted in this matter as district attorney, taking testimony in favor of Mexico and against the company. I took no part herein until the year 1877 or 1878.

4. Cross-question. Do you know that this same James Granger was examined several times in court at San Dimas in 1871 and 1872, and that his depositions, or copies thereof, were filed by the Mexican Government with the Claims Commission in opposition to La Abra Company's claim?

Answer. I knew nothing of it.

5. Cross-question. Do you know whether Granger was questioned by the Mexican authorities before or during any of his examinations as a witness for the Mexican Government in regard to the books and records of the company, and, if he was not questioned on this subject, why not?

Answer. I knew that Mr. Granger was a witness and that he testified for the company; but I can not say before what judge, nor at what time he did so.

6. Cross-question. Was it not notorious at Tayoltita and San Dimas that he had acted as bookkeeper for the company and was at the hacienda when Exall left?

Answer. I can not say, because I was never in San Dimas or in Tayoltita.

7. Cross-question. Granger and Sundell having appeared in court at San Dimas in September, 1873, with Exall's letter of February 26, 1868, for the purpose of having it translated into Spanish, what was there to prevent their examination as witnesses for the Mexican Government at that time in regard to that letter, or the books and records of the company, or any facts within their knowledge relevant to the company's claim?

Answer. I am absolutely ignorant of what took place at that time.

8. Cross-question. When and where did you first see Granger?

Answer. I think it was in Mr. Miller's house in Mazatlan, without recalling the date, but undoubtedly it was previous to the date on which he offered to deliver the books.

9. Cross-question. When did you first have any correspondence with him?

Answer. I believe it was in the year 1877.

10. Cross-question. You say in answer to question 14 in your direct examination that the unsigned letter which is attached to your deposition as Exhibit No. 51 was "transmitted" to you by Mr. Granger himself. Did you receive it inclosed in another letter by mail, or was it handed to you personally by Mr. Granger or by a messenger? Please state as precisely as you can when and in what manner or by what means that letter came into your possession.

Answer. I can not now remember through what means the said letter reached me, nor can I state whether it was inclosed in another letter or not.

11. Cross-question. On reflection, do you not think that you saw Alfred A. Greene, and conversed with him in regard to obtaining new evidence against La Abra Company's claim before June 8, 1877?

Answer. I spoke only of generalities with Greene of my relations with Granger.

12. Cross-question. Had he not told you, or did you not know before that time, that he had been employed by Gen. James E. Slaughter to procure such evidence and especially the company's books and papers which were left at Tayoltita?

Answer. I know nothing of what is asked me; nor do I know who the Gen. James Slaughter mentioned is.

13. Cross-question. Did Greene tell you or had you ever heard of a contract between General Slaughter and Señor Ignacio Mariscal, Mexican minister in Washington, for obtaining new evidence against La Abra Company's claim?

Answer. I neither know nor have I heard anything.

14. Cross-question. Were the expenses of obtaining new evidence through Granger to be charged against Slaughter, or was Slaughter to have the

benefit of what Granger might do under the agreement to which you have testified in answer to question 23 in your direct examination?

Answer. I know nothing of this.

15. Cross-question. Why did you make Granger's compensation dependent upon Mexico's exoneration from the payment of the company's claim?

Answer. Because I wished to make specific a settled condition (precisar una condición determinada).

16. Cross-question. How did it happen that there was no mention made of such a condition in Señor Vallarta's telegram of September 17, 1877, to you or in your reply of the 22d of the same month?

Answer. Not having the antecedents before me I can not answer the question.

17. Cross-question. Who was the "Pancho" mentioned as being "weary and even sick" in your telegram? And what, if anything, had he to do with the business on which you were telegraphing Señor Vallarta?

Answer. The reference was to a brother of Señor Vallarta, and this matter had nothing to do with the Abra question.

18. Cross-question. In that telegram you say that "if it is desirable he (Granger) can produce five or six depositions of reliable Americans such as Sundell." When was Sundell's deposition taken, and by whom were the interrogatories for his examination prepared?

Answer. I do not now remember the date on which his deposition was taken, nor the other circumstances asked me.

19. Cross-question. Was not Sundell a Swede who had spent most of his time in Mexico since his departure from Sweden?

Answer. I am ignorant of what is asked me. I referred to what Granger had told me, but I know neither Sundell or any of the witnesses.

20. Cross-question. When, where, and by what means did you become acquainted with Sundell?

Answer. I did not know him.

21. Cross-question. Did you have any consultation with Sundell and Granger, together or separately, prior to and in regard to Sundell's examination in 1877?

Answer. If I ever spoke to him I do not now recall it.

22. Cross-question. Where was Robert R. Symon when you last heard from him or of him, and is he still living?

Answer. I do not remember when I heard of him last. I believe he is not yet dead.

23. Cross-question. In answer to question 12 in your direct examination you say that you are familiar with Granger's handwriting. How often, if ever, have you seen him write, and how many letters in all, as near as you can recollect, have you received from him?

Answer. As I have had much business with Mr. Granger besides that of the La Abra Company I have had occasion to see him write often, and as his handwriting is characteristic it is difficult to confound it with another.

24. Cross-question. In answer to question 17 in your direct examination you said you had known Mr. Greene some two or three years prior to June 8, 1877, and that "he was then in the military service of Mexico." What rank did he hold and how long was he in that service?

Answer. I do not remember what rank he held; but it was that of a field officer, either colonel or lieutenant-colonel.

25. Cross-question. Are you not mistaken as to the time of Greene's military service? Was it not much earlier than 1875 or 1874?

Answer. I answered more or less; but I do not remember exactly.

26. Cross-question. Did you keep a copy of your telegram of August 24, 1877, to Señor Vallarta? If so, please produce it, so that it may be identified and attached to your deposition.

Answer. I did not keep it.

27. Cross-question. Have you obtained a certified copy of the instrument referred to by you in answer to question 23 in you direct examination? If so, please produce it, so that it may be identified and attached to your deposition.

Answer. No, sir; I have it not; but I will procure it.

28. Cross-question. If you have not obtained a certified copy, will you do so and hand it to the consul as soon as possible so that he may forward it with your deposition?

Answer. Yes, sir.

29. Cross-question. After sending the second lot in January, 1878, did Granger claim that he had produced "all the books and papers belonging to the company," or did he say that there were letters or other papers he could not find?

Answer. He said he had sent all. He sent them to me in two lots. In the first he sent the letterpress copy book and some of Exall's loose papers; in the second the books, papers, records, and other documents.

30. Cross-question. Why did it take him so long to find the books and papers at San Dimas, and why did he not find them altogether, but some at one time and some at another?

Answer. Because he had to go from Mazatlan to San Dimas; and as the letterpress copy book was what he had nearest at hand, and not having any means through which to send all the books, he only sent the letterpress copy book, and also because he considered it the most important.

31. Cross-question. From whose custody, charge, or possession in San Dimas or Tayoltita did Granger take the books and papers which he sent to you?

Answer. I understand they must have been in his own charge, as he was the bookkeeper; but I do not know.

32. Cross-question. Was any sworn or other statement in writing taken from Granger by you or any person on behalf of the Mexican Government in regard to the identity of the books and papers, their condition at the time of their delivery to you, or the persons in whose hands they had been, and the places where they had been kept since March, 1868?

Answer. Nothing was done in this regard. I did nothing but to receive and forward them as quickly as possible.

33. Cross-question. Did you notice that all of Garth's letters forwarded by Granger to you were to the same superintendent (Exall), and that there were none to Bartholew or De Lagnel?

Answer. I do not remember.

34. Cross-question. In answer to question 49 in your direct examination you said that you made a memorandum of the letterpress copy book and of the letters when you transmitted them to the minister of foreign

relations, and that you had preserved the memorandum. Please produce that memorandum so that it may be identified and attached to your deposition.

Answer. Happily I preserved a copy of the letter I wrote Señor Vallarta when I received the books. I have retained no memorandum of the books. This is a copy.

35. Cross-question. In replying to question 54 in your direct examination in regard to the time when you received the second installment of the company's books and papers from Granger, you examined another memorandum and said that according to it these books were received on the 24th of January, 1878. Please produce that memorandum so that it may be identified and attached to your deposition.

Answer. It is the same memorandum I handed you on replying to the previous question.

36. Cross-question. If a list of the second installment of books and papers received by you from Granger does not appear on the memorandum referred to in the last question, please state whether you made a list of those books and papers before shipping them, as stated in your answer to question 55 in your direct examination.

Answer. I did make a note of them, but I have no copy of it.

37. Cross-question. If you made such a list and it does not appear in the memorandum, please produce the list that it may be identified and attached to your deposition.

Answer. I have already answered in my last reply.

38. Cross-question. If you shall say that you did not make such a list of the second installment of books and papers, please state why you made a list of the first installment (the letterpress copy book and original letters), and did not make a list of the second installment of the company's records, especially in view of the fact that you had been instructed to send them from Mazatlan to the minister of foreign relations in care of the collector of the port at Acapulco, as you testify in answer to question 55 in your direct examination? Did you think it prudent or proper to ship such documents without making an exact list?

Answer. I made no list of the first, as there was but one book; but I did of the second, as there were many books.

39. Cross-question. When did you ship the books and papers by steamer to the minister of foreign relations?

Answer. I refer to the copy I have presented, No. 2.

40. Cross-question. Did you ever see those books and papers afterwards? If so, when and where for the first time afterwards?

Answer. I only saw them again in the court in San Francisco in the month of October last.

41. Cross-question. You testify in answer to question 51 in your direct examination that you sent the letterpress copy book and original letters to the minister of foreign relations on January 2, 1878. By what conveyance did you send them?

Answer. I think I sent them by mail, but I am not certain.

42. Cross-question. What disposition was made of the books and papers that you sent to the minister, or any of them, by him, so far as you know?

Answer. I do not know.

43. Cross-question. Where and in whose custody have those books and papers, or any of them, been since 1878?

Answer. I do not know.

44. Cross-question. In your answer to question 53 in your direct examination you say that you examined the books. Do you remember whether there were detached papers, and especially whether there was a portion of a journal consisting of quite a number of sheets of paper still attached together, but without covers?

Answer. I think not. I do not recall these circumstances.

45. Cross-question. By what means was the second installment of books and papers sent to you from San Dimas—by mail, private carrier, or otherwise?

Answer. I think it was by muleteer (private carrier), but I do not remember.

46. Cross-question. Did Granger notify you in writing that he had sent those books and papers, and did he specify what they were? If so, please produce such writing or writings, that they may be identified and attached to your deposition.

Answer. I think he said generally books, without specifying them, except the copying book. As he had relations with Miller, and I had also, he often addressed me through Miller, and therefore I do not remember if he notified me directly or not.

47. Cross-question. When did you first learn that Exall's letter of February 26, 1868, to Granger had been translated in court by Sundell? Did you ever see the translation; and, if so, when and where?

Answer. I know nothing of the question. I do not remember having seen such a letter.

48. Cross-question. When did you first see the original, or autograph of that letter?

Answer. I do not remember it.

49. Cross-question. Have you any recollection of receiving a number of detached papers and fragments of books with the bound books of the company?

Answer. No.

50. Cross-question. Do you recollect a paper-covered book containing a memorandum of ores delivered at the hacienda?

Answer. No.

51. Cross-question. Do you recollect a paper-covered "daybook," not paged, beginning July, 1866, and ending with an inscription partly destroyed by a hole in the paper?

Answer. No.

52. Cross-question. Do you recollect four fragments of a book, without the covers, which seemed to be parts of a cashbook?

Answer. No.

53. Cross-question. Do you recollect a sheet of four pages which seemed to be a trial balance?

Answer. No.

54. Cross-question. If you shall say that you do not recollect those particular papers, please state whether you could have failed to notice, when you received the second installment of the books and records of the company from Granger, that there were quite a number of detached and fragmentary papers, if such had been the fact.

Answer. I do not recall having seen detached papers.

55. Cross-question. Assuming that there were such fragmentary and detached papers, would not that fact have been a strong reason, under the circumstances, for making such a list as would identify them, each and all?

Answer. (That he has no answer to make, as he does not remember having seen any fragments.)

56. Cross-question. You have produced, in your direct examination, a letter from Señor Vallarta acknowledging the receipt of your letter of January 2, 1878, "with the document to which you refer." Did you receive a letter from the minister of foreign relations or any other person acknowledging the receipt of the books and papers you afterwards sent by the steamer? If so, please produce it, that it may be identified and attached to your deposition.

Answer. I do not remember, nor have I preserved any memorandum.

57. Cross-question. At or near the time you sent the second installment of books and papers to Señor Vallarta did you send to him or to the collector of the port of Acapulco, or any other person, a list of the books and papers sent? If so, and you have not kept a copy of such list, will you send for the original or a certified copy, that it may be attached to your deposition or forwarded by the consul to this court?

Answer. I can not secure it, as Señor Vallarta is dead.

58. Cross-question. You say, in answer to question 27 in your direct examination, that the first thing Granger did under his agreement was that "he went to San Dimas for the purpose of taking possession of the books and papers." In whose custody were those books and papers, and were they all in the same place or scattered here and there at that time? Please state all that you knew or were informed of on this point at that time.

Answer. I do not know how he had them. Mr. Granger was in charge of the whole business. It seems that Exall transferred everything to him just as it was. I do not know whether they were scattered or not; nor have I heard.

59. Cross-question. In answer to question 29 in your direct examination you say that you were going to San Dimas with Granger "for the purpose of examining certain witnesses, but in consequence of certain circumstances which arose it did not become necessary for me to go with him." What witnesses were you going to examine and what were the circumstances which rendered the proposed examination unnecessary?

Answer. They were witnesses who Granger himself told me could be secured. I do not recall the name or names of the witnesses in that locality he gave me. There were several [circumstances]; among others, that it was unnecessary to take their testimony, as the principal, which was the books, was already secured.

60. Cross-question. In your telegram of September 22, 1877, replying to Señor Vallarta's telegram of the 17th of the same month, produced in answer to question 32 in your direct examination, you say that Granger "will deliver the books of the Abra Company and the autograph of Exall if he is paid the $3,500 which is due him by the company, as he stated in telegram of the 31st of August, which, I believe, you have received." Was Granger's telegram of the 31st of August sent to Señor Vallarta by or through you; and, if not, how did you know what it contained?

Answer. I do not remember what I did, as I have no data at hand, but it was my custom to copy them—those of Granger—in my letters to Vallarta. In this case I do not recall what I did.

61. Cross-question. Did Granger ever say to you or make any statement in writing which you say that La Abra Company owed him $3,500?

Answer. I knew in one way or the other, but I do not remember which of the two, that he claimed the company owed him $3,500, which is what we took as a basis for the arrangement.

62. Cross-question. If you have kept Granger's telegram of August 31, please produce it that it may be identified and attached to your deposition.

Answer. I have not kept it.

63. Cross-question. In your telegram of September 22, 1877, you say: "Galan is residing for the present in Culiacan. Shall I make application in order that he may acknowledge his declaration before the judge of the city, or shall I wait until he comes?" What declaration of Galan's do you refer to? Please state particularly what that "declaration" was; whether his deposition which was submitted to the claims commission or some new statement he had made in regard to that deposition.

Answer. I was instructed, as district attorney, to proceed against Galan and others who had testified against the Government, and, it was believed, had testified falsely. About that time Galan was appointed a deputy or senator, I do not remember which. I immediately notified Vallarta, who ordered that proceedings against Galan be discontinued and that the prosecution of the others be pressed. I do not remember, but I think it was his deposition in favor of the claim.

64. Cross-question. Why did you ask whether you should wait until he came? Had you sent for him to come to Mazatlan or were you, for any other reason, expecting to see him there?

Answer. I do not know. He was going from place to place, as a field officer in the revolution.

65. Cross-question. In Señor Vallarta's letter of October 2, 1877, to you, produced by you in answer to question 37 in your direct examination, he mentions "the books of the Company La Abra, the autograph of Exall, and other proofs which he (Granger) offers." What "other proofs" did Granger offer?

Answer. He offered to furnish the testimony of the witnesses we were to examine when I was going to San Dimas with him.

66. Cross-question. In the same letter Señor Vallarta said that by the next mail he would "remit to you official instructions in respect to the deposition of Galan and other witnesses." Did you receive those instructions; and if so, will you produce them, so that they may be identified and attached to your deposition?

Answer. I do not remember whether I received these official instructions.

67. Cross-question. Who was it that first suggested that the payment of $3,500 to Granger should be contingent upon Mexico's complete exoneration from the umpire's award in favor of La Abra Company?

Answer. It was Mr. Minister Vallarta.

68. Cross-question. For what reasons did Señor Vallarta request you at the close of his telegram of November 14, 1877, to "act in the whole of this matter with great caution?"

Answer. That I might act in the most prudent manner, as he feared that Granger wished to deceive us to make money out of it.

69. Cross-question. You say in your telegram of November 16, 1877, to Señor Vallarta: "I also assure him (Granger) that the $500 will be given him for expenses." What "expenses" did you mean?

Answer. I do not recall now to what expenses it referred. I understand that these expenses were [for] the trips he had made to San Dimas.

70. Cross-question. How was Granger employed at Mazatlan immediately prior to his departure for San Dimas to get the company's books, and was he well off or straitened in money matters?

Answer. He was Miller's companion, for whom he acted as secretary, and was, moreover, his mining agent. I suppose he received a modest salary, and was in reduced circumstances.

71. Cross-question. What was the state of his health at that time, and when and where did he die?

Answer. He was in good health, was a fairly robust man, and it was plain that he was in full bodily and mental vigor. He died, shortly after entering into the $3,500 contract, at a point between San Dimas and Durango.

72. Cross-question. In Señor Vallarta's letter of November 14, 1877, produced by you in answer to questions 40, 41, and 42 of your direct examination, he said that you could pay "one-half of the $500 at once and the other [not] until you have in your possession the books and other documents." Did you make those payments to Granger as thus instructed?

Answer. I do not remember; but I am sure I made them as instructed by Vallarta.

73. Cross-question. In that same letter Señor Vallarta requests you again "that in the whole of this matter you will act with a great deal of caution, because Granger is not a man in whom you can place reliance, but on the contrary he appears to be very dangerous." Did you, in face of this warning and after such a description of Granger, make an agreement with him by which he was to get $3,500 for the evidence he might furnish, only in case Mexico should be completely exonerated from the payment of La Abra Company's award?

Answer. Yes; but in the understanding that I did not share in the want of confidence that Vallarta evinced, so much so that in a letter to Vallarta I stated that I had entire confidence in Granger, and that I thought he was acting with loyalty and could be of service to him.

74. Cross-question. Why, when you were able to examine the books and papers that Granger produced, did you make the great bulk of his compensation contingent upon Mexico's exoneration?

Answer. By special instructions from the minister.

75. Cross-question. In your letter of December 3, 1877, to Señor Vallarta in reply to his from which I have just quoted, you say: "Granger is disposed to produce the witnesses at the Noria, San Ygnacio, and San Dimas, and to bind them to testify upon such terms as will be arranged by common agreement beforehand." Please give the names of the witnesses whom Granger was disposed to produce at each of those places and state in what way or by what means he proposed to bind them to testify upon such terms as were to be arranged by common agreement beforehand. Did he propose that the "common agreement beforehand" should be in writing? And how was he to "bind" them "beforehand?"

Answer. I do not remember that he gave me the names of those witnesses, and, if he did, I have not retained their names. He did not pretend to bind them, but to produce them for examination, as he knew them beforehand. He did not propose that it (the agreement) should be in writing. That is an error. It was not intended to bind them in any way to testify.

76. Cross-question. Were those witnesses to be examined under oath in court?

Answer. Yes; they had to be examined under protest.

77. Cross-question. You say in the same letter that Granger was disposed to send you points in respect to the interrogatories for those witnesses which you would duly frame and would send officially to the judicial authorities of the places, and that with this your proofs would be complete. Did Granger send you those points, and did you frame those interrogatories and send them to the judicial authorities, and were those witnesses ever examined?

Answer. He did not go to the extent of sending them to me, as they were deemed unnecessary. Consequently, they were not framed to be sent to the local authorities.

78. Cross-question. You say in the same letter that you remit to Señor Vallarta "the autograph of Exall, delivered to me this day." Had you ever seen that letter of Exall's before; and, if so, when and where?

Answer. I think not.

79. Cross-question. What "judicial translation" of it is referred to in Señor Vallarta's telegram of September 17, 1877, to you?

Answer. Not having the telegram before me, I can not say to what it refers.

80. Cross-question. What is the rule about the originals of papers judicially translated in court? Can they be withdrawn with the translations; and what record of the proceeding, if any, remains in court?

Answer. They may be withdrawn by leaving a certified copy on file, or a copy of the original and the translation.

81. Cross-question. Did you forward the book of the printed testimony to Granger as suggested in his letter of November 25, 1877?

Answer. I can not answer, not having before me the letter referred to.

82. Cross-question. Who were the three witnesses whom Granger said in that letter he had seen and arranged with to give testimony?

Answer. I did not know their names, and, if I did, I do not recall them.

83. Cross-question. How did it happen that Granger was able to deliver Exall's letter of February 26, 1868, before he delivered the letterpress copy book or Garth's letters?

Answer. I do not know how. He sent the letter with the letterpress copy book, and also one other document, but I do not recall what it was. It would be easy for him to send on a book, and afterwards all the rest.

84. Cross-question. In his letter to you of December 25, 1877, produced by you in answer to question 45 in your direct examination, Granger said that since his arrival at San Dimas he had been endeavoring to find the books of account of La Abra Company; that he had not been able as yet to find [more than?] one or two, but that he still continued making search for them. Why, if these books and papers had been in

his possession continuously since March, 1868, did he need to make search for them so long, and how did it happen that he found the letterpress copy book and Garth's letters to Exall before he found the account books?

Answer. I do not know.

85. Cross-question. How did it happen that he found one or two of the account books before he found the others?

Answer. I do not know.

86. Cross-question. What, if anything, did Granger tell you in regard to the whereabouts and custody of those books and papers before he left San Dimas to obtain them?

Answer. I do not recall that he spoke to me of the place where he had them.

87. Cross-question. Did you have the impression when he left for San Dimas to obtain the books and papers of the company that they were absolutely in his possession or control so that he could at once turn them over to you?

Answer. I always thought so.

88. Cross-question. When you received his letter of December 25, 1877, were you not surprised to learn from it that he had as yet been unable to find but one or two of the account books, and that he was still continuing his search?

Answer. No; because I was ignorant of the motive for Granger's action.

89. Cross-question. Did he ever tell you where or in whose possession he found the letterpress copy book, or Garth's letters, or any of the books or papers?

Answer. No, sir.

90. Cross-question. Did it not seem strange to you that he should have said in his letter of November 25, 1877, to you, that the books of the company would be forwarded by the first rineros, some of whom were expected at San Dimas from Mazatlan "next week," and yet should have written to you a month later that he had only found one or two of the books, but would continue his search for them?

Answer. I had no reason to think it was strange.

91. Cross-question. Was it in reliance on Granger's letter of November 25, 1877, that you said to Señor Vallarta in yours of December 3, 1877: "The books are now on their way and will arrive here soon?"

Answer. It must have been so, although I do not now remember.

92. Cross-question. How long a time elapsed after that before you received the letterpress copy book and original letters?

Answer. A few days. I think it was not a month, more or less.

93. Cross-question. How long was the second installment of books and papers in your possession before you sent them to the minister?

Answer. A few days. I do not think it was as long as a month.

94. Cross-question. You say, in answer to question 61 in your direct examination, that you offered De Lagnel's testimony to Señor Vallarta "because the offer came from Mr. Granger." Had Granger told you that he had been in correspondence with De Lagnel and had arranged with him to give his deposition?

Answer. I do not remember what Granger told me, but he assured me he could testify.

95. Cross-question. Did you know of the efforts of Alfred A. Greene to obtain testimony at Mazatlan, La Noria, or San Dimas against La Abra Company's claim in the spring or summer of 1877?

Answer. No, sir.

96. Cross-question. Did you know that he told William G. S. Clark that his deposition on behalf of La Abra Company had been tampered with by Gen. A. W. Adams?

Answer. I do not remember if he spoke to me of it.

97. Cross-question. Did you ever have any conversation with Mr. Clark in regard to his deposition?

Answer. I do not remember having had it.

98. Cross-question. Do you know whether he was examined in court at Mazatlan or elsewhere in Mexico touching the testimony he had given for the compahy; and if so, in what court and about what time?

Answer. I think he testified before the district court at Mazatlan, without being sure. I can not fix the time.

99. Cross-question. Was a transcript of his examination sent to Señor Vallarta or the Federal Government?

Answer. It must have been sent to Señor Vallarta as minister of [foreign] relations, but I do not know it.

100. Cross-question. Does Mr. Clark still reside at Mazatlan? If not, where was he living the last time you heard of him?

Answer. He lived and died here about six or eight years ago.

101. Cross-question. Did you know Dr. James C. Reed in 1877?

Answer. I do not remember. It may be that I knew him and do not retain the name in my memory.

102. Cross-question. Did you know that Alfred A. Greene had tried to enlist Dr. Reed in obtaining testimony against La Abra Company's claim?

Answer. I do not remember.

103. Cross-question. Does Dr. Reed still reside at Mazatlan; and if not, where was he living the last time you heard of him?

Answer. I know nothing of Dr. Reed.

104. Cross-question. Where is San Antonio de la Noria from Mazatlan?

Answer. It is from 14 to 15 leagues inland from Mazatlan.

105. Cross-question. What had you to do, if anything, with the examination of J. F. Gamboa or J. M. Loaiza in the superior court of that place in June, 1877?

Answer. Gamboa and Loaiza were witnesses who testified against Mexico, for which reason they were prosecuted for perjury.

106. Cross-question. Were those the proceedings you had in mind when you testified, in answer to questions 67, 68, and 69 in your direct examination, that you instituted criminal proceedings against Loaiza and Gamboa for "the crime of perjury committed by them in testifying falsely against the Mexican Government in this matter of La Abra?"

Answer. Yes.

107. Cross-question. If those persons were prosecuted or judicially examined in respect to testimony given by them on behalf of La Abra Company at any other place than La Noria or at any other time than June, 1877, please state in what court and at what time and place and with what result.

Answer. They were prosecuted before the district court of Mazatlan. It must have been in the year 1877 or 1878, not remembering the outcome.

108. Cross-question. In answer to question 71 in your direct examination you said that you received special instructions not to prosecute Galan. Were those instructions in writing; and if so, will you produce them that they may be identified and attached to your deposition?

Answer. I received them in writing in a private letter from the minister of [foreign] relations in Mexico. I have not preserved it.

109. Cross-question. At that time had you read the testimony of Galan which was filed with the Claims Commission and printed in La Abra Company's book of evidence?

Answer. I think I must have seen it, but I do not recall it.

110. Cross-question In answer to question 71 in your direct examination you said that the reason why you were instructed not to prosecute Galan was "because at that time he had just been elected Federal senator and by virtue of his office he was exempt by the Federal laws from arrest, except by consent of the Senate." Had not the Mexican Government at that time appealed to the equity of the United States, in the name of honor and justice, against the award which the umpire had rendered against Mexico in favor of La Abra Company?

Answer. The reasons for my actions were the instructions of the minister of [foreign] relations.

111. Cross-question. Had not the Mexican Government charged that the award had been obtained by fraud and perjury and that in good conscience Mexico should be relieved from the payment of so large a sum of money?

Answer. I remember that the umpire made an award against Mexico with the express reservation that if there was any false testimony among that presented Mexico, as well as the United States, had laws and courts to punish at all times falsehood and perjury.

112. Cross-question. Was not the Mexican Government at that time seeking to be relieved and preparing the means of obtaining relief from the umpire's award on the ground that the evidence on which his decision was based was false and perjured?

Answer. I believe that Mexico did not cease her endeavors to have the award reviewed owing to the falsity of the proofs presented.

113. Cross-question. If it was the duty of the Mexican Government to furnish the Government of the United States with judicial proof of perjury, in so far as the witnesses charged with perjury were Mexican citizens or within Mexican jurisdiction, would Mexico be relieved from that duty, either with respect to herself or the United States, by the fact that one of the witnesses charged with perjury had "just been elected Federal senator?"

Answer. No; but the accusation could not be made at once, without first asking the permission of Congress, according to the constitution.

114. Cross-question. What positions of trust and honor in the Mexican public service had C. F. Galan held prior to 1877?

Answer. At that time Señor Galán was a military officer and had dedicated himself professionally to the practice of law.

115. Cross-question. Is there any statute of limitations in Mexico

limiting the time within which the Government may prosecute for perjury committed to the Government's pecuniary detriment? If so, what is the period?

Answer. There is no statute; but there is one to the effect that senators shall not be prosecuted except by declaration of Congress, according to the constitution.

116. Cross-question. Was Jesus Chavarria, William H. Smith, or Alfred A. Greene ever criminally prosecuted by you, or anyone on behalf of the Mexican Government, for perjury alleged to have been committed in the testimony which they, or either of them, gave on behalf of La Abra Company?

Answer. I do not recall that they were, either by me or at the instance of any other person.

117. Cross-question. In answer to question 72 in your direct examination you said that "some of the parties were imprisoned." Do you mean to say that any person who testified on behalf of La Abra Company was regularly tried in court for having committed perjury in such testimony and convicted of the crime of perjury in such trial and punished for such crime? If so, please state the name of such person or persons and the time and place of trial in each case, as near as you can, so that certified copies of the proceedings may be obtained as evidence in this suit.

Answer. They were placed in jail while the case was pending, without recalling whether or not they were discharged or found guilty. I only recall Loaiza and Gamboa. This must have been in 1877 or 1878, in the district court of Mazatlan.

118. Cross-question. Are you aware that copies of the depositions of J. F. Gamboa, Trinidad Gamboa, and J. M. Loaiza, made in court at La Noria, in June, 1877, are contained in the newly discovered evidence and made part of the complainant's bill in this suit?

Answer. I think they must form a part of the proceedings that were had against them, but I do not know.

119. Cross-question. So far as you know, has any proof of the trial, conviction, and punishment for perjury of any of the witnesses who testified on behalf of La Abra Company's claim ever been produced or offered in this suit or in prior investigations of this matter in the Department of State or the Congress of the United States by, or on behalf of, the Mexican Government?

Answer. I do not know; but it is probable that it was sent to the ministry of [foreign] relations. It was a public thing, published by the entire press.

120. Cross-question. If any such proof is in existence, or could be obtained, do you know of any reason why it has not been produced by the Government of Mexico?

Answer. I do not.

121. Cross-question. Why was not Exall's autograph, or the judicial translation of it, produced before the Claims Commission?

Answer. I can not answer.

MAZATLAN, MEXICO, *December* 22, 1894.

———— ————, *United States Consul:*

The name of the witness, viz, L. Gaona, is signed on each page of the deposition.

No. 2.] MAZATLAN, *January* 24, 1878.

Sr. Lic. YGNACIO L. VALLARTA,
Mexico.

DEAR FRIEND: The books in the "La Abra" matter reached here to-day at the same time that the Panama steamer arrived from San Francisco, while I was replying to your letter of December 26th last.

Despite the efforts I made, it was impossible to ship the package containing the books, which will remain until next month, for it can not go by mail. I have not as yet had time even to open it and learn specifically its contents.

You will by this time have received the copy of the contract I made with Mr. James Granger. In it there is set forth that there is only due him a balance of two hundred dollars, which I shall hand over to him so soon as I receive from the custom-house the one hundred, which I know have been ordered to be delivered to me. You will have received also the letterpress copy book which I sent you with my letter of the 2nd instant—a book which, from what Granger says, must be very important to our object.

In my last, to which I have referred, I suggest that in order to assist me in carrying out the extraordinary work brought upon me in the conduct of the proceedings relating to claims, I think it just that I be authorized, as has been done on a previous occasion, to pay a clerk at the rate of $50, at least for six months, while the work incident to the rebuttal testimony in the "La Abra" matter is being prepared. In this way I could recoup the deficit now appearing against me, according to the account I enclose, and pay a boy to assist me in my labors.

Pancho continues ill and disgusted, and is awaiting the granting of his leave to depart from this place, which seems to have been a purgatory for him.

I shall write you very soon and transmit opportunely Granger's receipt for the $200 still due him so soon as he shall return from San Dimas. He writes me now that he will come here to concert with me the preparation of the testimony to be taken in La Noria, San Ignacio, and San Dimas, and that he will need another advance, although smaller, to again return to San Dimas. I prepared, together with him, all the interrogatories, papers, etc., and I hope we shall ultimately obtain a favorable result.

Galan, who has been already declared senator and who is here now, assured me that he is awaiting a resolution of the department under your charge, or something from you personally. In the meanwhile I offered to take no action against him.

As regards Don Antonio Peña and Don Manuel Castillo, nothing can be done, for, as Granger informs me, there is no falsity or other reason to proceed against them. You will, at any rate, tell me what you wish done in the premises.

As my duties have multiplied so greatly this season, for, besides six or seven *amparo* suits constantly on hand, with this year's expeditions have come many [word illegible] cases, principally the proceedings I am conducting for the cargo of the schooner *Eustace*, which, for the second time, has been seized laden by the Republics of the South, this being, as it is said, the consequence of the *Montana*.

Stipulation waiving informality of deposition of L. Gaona on cross-interrogatories.

All objections to informalities in taking and returning testimony of Ladislao Gaona on cross-interrogatories in the United States consulate at Mazatlan are hereby waived.

ROBERT B. LINES,
Special Assistant to Attorney-General.
SHELLABARGER & WILSON,
Solicitors for Defendants.

Deposition of Julius A. De Lagnel, for complainant, taken at Washington, D. C., on the 14th day of November, A. D. 1894.

Complainant's counsel, Robert B. Lines, esq., special assistant to Attorney-General; respondents' counsel, Crammond Kennedy, esq.

JULIUS A. DE LAGNEL, having been recalled as a witness on behalf of the complainants, was thereupon examined by the counsel for the United States, and, in answer to interrogatories, testified as follows:

Direct examination by Mr. LINES:

1. Question. Colonel de Lagnel, I ask your attention to certain books, papers, and memoranda offered in evidence in this case on behalf of the complainants as exhibits to the testimony of Alexander K. Coney, and wish you would look at the book marked Exhibit No. 22 and state if you know what that book is.

(Counsel for the respondents desires to state that the books and papers which have just been mentioned were offered in evidence at an examination which was taken in San Francisco under a stipulation between the parties which provided that testimony so taken should be subject to any objection by either side at the trial. Respondents now object to the books and papers, on the ground that they were not specified in the complainant's bill, which, however, did specify certain other documents by which the complainant expected to prove certain alleged facts; and for another objection to the said books and papers, respondents say that they were offered en masse, without any statement of the facts which it was expected to prove by them; respondents also now desire to reserve any objection which may hereafter be made severally against the books and papers or any of them. Respondents desire to note a further objection to any testimony on the part of the witness in regard to these books and papers, on the ground that if the books and papers are inadmissible, of course any testimony in regard to them by way of identification or otherwise is also inadmissible.)

Answer. This I believe to be the cashbook which was dleivered to me by Gen. Thomas J. Bartholow at the time of his departure upon surrendering control of the company.

2. Question. Of what company, Colonel?

Answer. The La Abra Silver Mining Company.

3. Question. Please look at the book marked Exhibit 23, and state if you know what it is.

Answer. That is one of the books, doubtless, but I do not remember or recollect it at all. I am satisfied from the entries that it must have been one of the books, and from its binding, but there is an absence of anything from General Bartholow.

4. Question. How do you mean no entry from General Bartholow?

Answer. The book has not been used prior to General Bartholow's departure; it must have been a blank book when turned over by him, as one of a set.

5. Question. Do you recognize it by the handwriting or the character of any of the entries or names in it?

Answer. I recognize names, but do not remember the facts. I see my own name and also others, and have no doubt it was used, but I can not tell. I recognize it only by the general similarity of its binding and the fact that familiar names are mentioned in it.

6. Question. Do you remember whether a book of this character was or was not kept during your superintendency of the La Abra Silver Mining Company?

Answer. The difficulty is my mind does not serve me. Had I been asked previously, I should have said there was a journal—either a daybook or a journal, I could not tell which—that was kept, but that is merely a record. I have no doubt it is one of the books, but I can not say anything further about it.

7. Question. Please look at the book marked Exhibit 24, and state if you know what that is.

Answer. That is the ledger, turned over to me by General Bartholow.

8. Question. Who kept the books for General Bartholow?

Answer. As far as I know he kept them himself. I do not think anyone had excess to them but himself.

9. Question. Did you know Mr. I. V. Hardy?

Answer. Yes, sir.

10. Question. What were his relations, if any, to the company?

Answer. Mr. I. V. Hardy was, I believe, interested in the company. I think he was a member of the company, and he had charge of the store—of all the merchandise in the store, the sales and receipts—and was represented to me when I went out as the person on whom I might rely to keep the accounts of the establishment, General Bartholow being expected to return.

11. Question. How long did he stay after General Bartholow left?

Answer. But a short time, sir. He stayed later than his brother, who left almost immediately, but he did not remain long, and I can not say when he went. He must have gone early in the summer to escape the floods, which would have rendered his traveling impossible.

12. Question. Were you familiar with his handwriting?

Answer. No, sir; I would not recognize it if I should see it. I have no recollection of it at this moment.

13. Question. Please examine the book marked Exhibit 25, and state if you know what that is.

Answer. That appears to be a book of daily sales in the store, beginning with January 25, 1866, which is anterior to my going there. It runs up to about the time of my taking charge.

14. Question. Do you remember whether that book was turned over to you or not?

Answer. That I could not say, sir. I do not recognize the book at all.

15. Question. Have you examined the handwriting in it carefully, so as to identify any of it?

Answer. It is strange to me; I could not tell you who wrote any of it.

16. Question. You base your statement, then, on the character of the entries?

Answer. The whole thing I do not recognize in anywise. It was anterior to my going there.

17. Question. Please look at this book marked Exhibit No. 27, and examine it both as to appearance and the handwriting and the character of the entries, and state if you know what it is.

Answer. While not recognizing the book, I recognize the first entries in the book as General Bartholow's. It is a book with which I am not familiar and I can not say that I recollect anything about it. It must be a book of daily sales.

18. Question. Have you any idea as to what it was, whether it belonged to the company or not?

Answer. I have no doubt that it belonged to the company from the character of the entries made and the names mentioned. I do not think there is any doubt as to its genuineness.

19. Question. Now, recurring to Exhibit 25, I ask your attention to two entries on page 2, near the bottom next to the last, and on page 6, five entries next to the last two, and ask you whether you recognize the handwriting of those entries?

(Counsel for the respondents object to the question on the ground that the witness has already testified that he does not recognize the book in any wise, and tnat it was kept anterior to the time of his arrival at Tayoltita.)

Answer. I could not indentify or recognize them at all. The only thing that is at all recognizable is in the last entry alluded to, the very last, the signature of General Bartholow is somewhat like his, but the rest of the entry, although written by the same person, is not recognizable. The figures seem to be written by another.

20. Question. Please look at the book marked Exhibit 29, beginning with the index and running to page 175, and state if you know from the appearance of the book or the character of the entries or the handwriting what that book is?

(Question objected to by the counsel for the respondents upon the ground that as the witness was superintendent of the defendant company at Tayoltita and has already testified that the books and records of the company were turned over to him by General Bartholow the question now in this attempt at the identification of the books should be whether he recollects and not whether he knows from a personal examination of the books what they were or what they are.)

Answer. I do not know the book and still, from the names mentioned, I have no doubt of its having been among the collection. It is a book that began long anterior to my going there, although there are entries in the latter part following up in my superintendency.

21. Question. Do you recognize any of the handwriting in the book?

Answer. I would not if it were out of the book—none of it. It is mere guessing at it from the order in which it occurs. I would not recognize it outside of this room if it were elsewhere than in this connec-

tion. No, sir; I won't attempt that, I do not recognize it. I have no doubt that it is one of the books that came over from Bartholow's administration—some old book left in the case, I suppose. Exhibits 22, 23, and 24, the American-made books bound in leather, were the only ones that I recognized as the regular books of the establishment, until I purchased a second set; finding that there were errors made, I wanted the books correct and bought them for that purpose.

22. Question. Please look at the unbound books, marked Exhibits 35, 36, 37, and 38, and state if you recollect to have seen them or any of them.

Answer. I do not recollect to have ever seen Exhibit 35—know nothing about it. While not recognizing No. 36, I have no doubt that it was one of the books kept as a blotter. No. 37 I recognize and admit as a book belonging to the company. I do not recognize this Exhibit 38, but I have no doubt that it belonged to the company.

23. Question. Please look at books 32, 33, and 34, and state whether you recognize them or any of them as books which belonged to the company—they are the unbound ones.

Answer. No. 32 I recognize, simply because I see an entry by my own hand there. No. 33 I recognize on the same ground, as I find an entry by my own hand. No. 34, while recognizing nothing, I believe it to be one of the set, and was a blotter kept in the store. They are all three blotters kept on the counter.

24. Question. Please examine book marked 31, and state whether you recognize the same as one of the books belonging to the company.

Answer. This is part of a mutilated book—this is part of a mutilated journal. That is one of the original books; that is, all that remains of an original journal.

25. Question. Do you think that is part of one of the original American-made books?

Answer. One of General Bartholow's original set, which book was a journal and shows where the debits and credits lie, and help you to post the ledger.

26. Question. Do you remember how large that journal was?

Answer. My recollection all along was that there was a journal, and not finding it among the books, that is the only thing that I see and recognize as General Bartholow's.

27. Question. Do you know what this unbound fragment, marked Exhibit 39, is?

Answer. No, sir; I do not recognize the book.

28. Question. Please look at this unbound book, marked Exhibit 40, and state whether you recognize that and what it is.

Answer. That is a memorandum of the ores received from the different mines, that is all, sir. I do not recognize the thing. This is not the original manner of keeping the ores as received. It was merely a day by day tally of the sacks as they were put off and the total amounts named for each day kept in pencil; this is ruled up in ink, and it is taken from the others, I presume.

29. Question. Please examine carefully the handwriting of that, Colonel, and see if you recognize any of it.

Answer. They are in three different handwritings—I can not tell what it is. Upon further examination I find that under date of February 27

and March 5 there are entries to Jacinta Parada; that is in my handwriting. Then there is an entry that I do not recognize, but the last entries I think are in the handwriting of Mr. Granger—from April 1 to June 4, in the hands of Mr. Granger—that is on the same page. There is no year stated, but it must have been 1867, because that was the only year in which I was there in those two months. From April to June are entries in the handwriting of Granger.

30. Question. Here is a memorandum in pencil, marked Exhibit No. 47; do you know anything about that, or recognize it in any way?

Answer. No, sir; I do not know anything about it—do not recognize it.

31. Question. Here is another, a receipt in Spanish, marked Exhibit 48, signed Norton; do you recognize that?

Answer. I have never seen it before, as I know of, and I do not recognize it, but it is a hand receipt for goods delivered.

32. Question. Do you know the handwriting?

Answer. I can not say except for the fact of its having been handed to me under these circumstances, which points to its being Norton's.

33. Question. Who was Norton?

Answer. He was employed there as bookkeeper and clerk.

34. Question. By whom?

Answer. By me.

35. Question. How long did he act as bookkeeper and clerk?

Answer. Without being able to state the exact date, he came shortly after the departure of Mr. I. V. Hardy, when, finding myself alone, I took him, as he was sent to me highly recommended. He remained with me. I suppose he was there eight or nine months. I can not tell the exact time.

36. Question. Who kept the books after Mr. Norton left?

Answer. After Norton left I put them in the hands of Mr. Granger.

37. Question. And he kept the books?

Answer. Yes, sir.

38. Question. Here is a memorandum of payments, marked Exhibit 49; do you know anything about that?

Answer. It is a memorandum of money paid out, I suppose; I do not recognize it—know nothing about it.

39. Question. Look at this receipt, signed A. B. Elder, marked Exhibit 50, and state if you recognize or know anything about that.

Answer. I can not say anything with regard to this; I know nothing of it. It seems to be a receipt given by Mr. Elder—he was a carpenter—for lumber brought down from the mountain.

40. Question. There is a penciled memorandum, marked Exhibit 46; do you know anything about that?

Answer. I know nothing about Exhibit 46.

41. Question. Please look at the statement headed "Cash account," marked Exhibit 41, and state whether you recognize that; and if so, what it is?

Answer. I see what it is; it must be a statement of what is contained in the cashbook, credit side, but I do not know for what purpose made or when made. I think this was made by Norton.

42. Question. Please look at the paper marked Exhibit 42, and state if you recognize the handwriting; and, if so, whose it is.

Answer. This seems to be a memorandum in the handwriting of Mr. Granger.

43. Question. Well, please look at the paper marked Exhibit 43, and state, if you know, in whose handwriting that is.

Answer. This is the same—one of the same character—the same handwriting, namely, Mr. Granger's.

44. Question. There is Exhibit 44. In whose handwriting is that?

Answer. That is the same thing; they are parts of the whole.

44*a*. Question. Please look at Exhibit 45. Whose handwriting is that?

Answer. I should think this is the same.

45. Question. Do you recollect any of these last four papers, from their subject-matter, as papers belonging to the company?

Answer. I do not.

46. Question. In your former examination in this case, Colonel, you testified that during your administration you had a new set of books opened. Will you state, if you have not already stated it, what those books were?

Answer. I am unable to say exactly what the books were, as I can not remember.

47. Question. Do you remember how many there were?

Answer. There were three books, one was a ledger; but what the others were I won't pretend to say.

48. Question. Where did you procure those books, Colonel?

Answer. I bought them in Mazatlan.

49. Question. Please look at these three marble-paper-covered books with green backs, Exhibits Nos. 26, 28, and 30, in the deposition of Mr. Coney; and state if you recognize them; and if so, what they are.

Answer. No. 26 I do not recognize.

50. Question. Have you examined the handwriting in No. 26, Colonel?

Answer. There are several handwritings; it must be a blotter or day-book, simply an account of sales. No. 28 is the ledger, but I can not recognize it; I recognize the subject-matter, but not the book itself. No. 30 relates to matters after I left, and I do not recognize it.

51. Question. How long before you left there were the books that you speak of as having been opened by yourself opened?

Answer. I can not speak precisely; it was in the spring of 1867, I think; at least, I judge so. I could not tell you whether it was in the winter or spring.

52. Question. What was the occasion of your opening a new set of books?

Answer. I had asked the bookkeeper, who then was a man by the name of Norton, to prepare me a statement to send to the company; I think it was that or some other official statement, and upon examining it I found that it contained errors, and upon referring to the books found still more errors, and also that there were scratches on the books which surprised me, because we distrusted the whole thing, and I charged him with neglect, at least. I then purchased a new set of books and had Mr. Granger, who was represented to me by his own statement and by that of others as a proficient bookkeeper, and I asked him if he could straighten out the books, and he said he could; so I gave him the new books. I understood that he had opened the three books, as I believed, in due form, and I left under that impression. It has been so long since the occurrence that it is impossible to speak precisely as to what happened, as you

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would wish me to do, and as if it had happened yesterday; twenty-eight years is a long time to remember.

53. Question. Were other entries made in the old books after the opening of the new books, to your knowledge?

Answer. Not to my knowledge.

54. Question. Can you describe the books you bought in Mazatlan?

Answer. I can not, sir; I confess that when these books were shown me they did not correspond with my impression, which was a mere impression; but the impression that I had was that if I saw the thing before me I would be able to say, That is the one. I was surprised, although I do not say that these are not the books and do not charge that they are not.

55. Question. Have you any recollection whatever of the character of the books you purchased?

Answer. Yes; I thought they were a thicker book and that the proportion was not that of a thin and slender volume like Exhibits 26, 28, and 30, and that they had blue backs; but it is a mere impression with me, and I would not swear that it was so.

56. Question. What sort of binding?

Answer. It had mottled paper covers and, I thought, blue backs; at least I thought so.

57. Question. About how often did you look at this new set of books?

Answer. That I can not tell you. He was employed with them for some time. He was working day by day assiduously, and I thought doing it thoroughly; and when I came away I was assured that everything was right, so far as the books were concerned, and I therefore felt no uneasiness, but I always felt annoyed that they had to be made at all.

58. Question. What instructions, if any, did you give with reference to transferring accounts from the old books to the new?

Answer. That I can not tell; I do not know that I gave him instructions, as I regarded him as my superior in this; I thought that he would take it and make a proper record. The ledger being wrong, I did not think that he would copy it, but would go back and correct the errors made and introduce it into the new book correctly.

59. Question. When you say "he" you mean Mr. Granger?

Answer. Yes, sir.

60. Question. Do you remember ever examining the new books after Mr. Granger opened them?

Answer. If you ask me if I recollect it, I do not. I can not recollect such a thing as that.

61. Question. Colonel, please look at the entries from April 1 to the 10th, in Exhibit 26, and state whether there is any of your own handwriting in those entries.

Answer. I do not think there are any of mine in Exhibit 26.

(By consent of the parties, at this point the taking of this deposition was adjourned to Friday, November 16, 1894, at the same place.)

Deposition of JULIUS A. DE LAGNEL resumed according to adjournment, at the time and place fixed, the same parties present as aforesaid.

Direct examination by Mr. LINES continued:

62. Question. Colonel, please look at the entries on the last three pages

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of Exhibit 26, running from April 1, 1868, to April 30, 1868, and state in whose handwriting they are.

Answer. I won't pretend to recognize it.

63. Question. Please look at Exhibit 30, entries commencing April, 1867—take the first page for instance, and see if you know whose handwriting it is.

Answer. I could not testify as to whose it is.

64. Question. Will you see whether or not it is the same in your judgment as that in Exhibit 26, to which I have just called your attention?

(Counsel for the respondents objects to the question for the reason that this is a matter for the court to decide, and besides the Colonel is not examined as an expert.)

Answer. I have no opinion on the subject.

65. Question. Look at Exhibit 28 and see if you can tell whose handwriting that is.

Answer. The condition is just the same as the last, exactly.

66. Question. Now, with respect to these three books, Colonel, 26, 28, and 30, having made the examination of them, have you any reason for supposing that they are not the books which were opened by Granger at your direction?

Answer. I would not say that, sir; my recollection is not sufficiently good to justify that.

67. Question. You testified that the books that you purchased, according to your recollection, had mottled paper covers of this character, but that your impression was that the books were blue, whereas these are green, and that they were not thin and slender——

Answer. That was the impression that was in my mind, but I have no distinct recollection. I have no reason to doubt that these are the books and I do not mean to intimate that they are not.

68. Question. Colonel, please look at Exhibit No. 22, the cashbook turned over to you by General Bartholow, and state what you find with regard to the last entries in that book, and when they appear to have been made.

(Counsel for the respondents objects to the question upon the ground that the book itself is the best evidence on that point.)

Answer. On page 75 of General Bartholow's cashbook, under date of April, 1867, from the 1st to the 5th, inclusive, I find various charges for personal, household, and other expenses.

69. Question. Do you recognize any of the items of expense?

Answer. Nothing at all about it, sir.

70. Question. In whose handwriting do you find those entries to be?

Answer. I should think they were Mr. Granger's.

The said witness was then cross-examined by the counsel for the respondents, and, in answer to interrogatories, testified as follows:

Cross-examination by Mr. KENNEDY:

1. Question. Colonel, where was it that General Bartholow turned over the books of the company to you?

Answer. In Mazatlan.

2. Question. Will you state, as nearly as you can recollect, what books were delivered to you there?

Answer. The ledger was one of them, and the other two, if there were two—I think there were three given me in all. To the best of my recollection and belief the three books lying before me bound in brown leather, one being the ledger, and the other I do not recollect what it was.

3. Question. Do you recollect whether the letterpress copy book was delivered to you there?

Answer. I do not recollect, sir.

4. Question. What is your best impression?

Answer. Well, my impression is this, that it was not, for this reason, that I do not find in it a copy of a letter to Mr. Garth in which I stated that I found a large indebtedness, whereas it was represented there was none.

5. Question. Now, when were you next in Mazatlan after you parted with General Bartholow?

Answer. I do not recollect precisely, but I think the next visit may have been in the month of June, the succeeding month.

6. Question. Now, I invite your attention to a "Financial statement of affairs" as printed on pages 264 and 265 of the complainant's bill and exhibit and ask you to please look at the first entry in which you debit yourself by cash paid on account drafts on company, $15,300, and tell me whether you notified Mr. Garth of that draft for $15,300 at the time?

Answer. Well, now, sir; I can not answer that question. I know in that letter to which I referred and which Mr. Garth had, I told him I would draw on him for a certain large amount, but whether I notified him specifically as to that I do not know. I can not tell you what I did in that case.

7. Question. Would you be likely to draw on Mr. Garth for such a sum as that without notifying him?

Answer. I think not, sir; I should judge not.

8. Question. Now look at this entry, "To amount paid for merchandise and provisions purchased by myself, including freights and charges as rendered to date, $1,796.65." This entry you notice is in an account dated May 31. Now, had you not been at Mazatlan and made this purchase yourself prior to the 31st of May?

Answer. No; I do not think that, sir. I won't be positive, but should think that these were possibly bought at the time when General Bartholow went away. He went around with me to the various houses, etc.

9. Question. Was that not in the month of May?

Answer. It may have been, possibly so.

10. Question. Now, to refresh your recollection, please look at the bottom of page 258, where Mr. Bartholow, in a letter dated April 27, 1866, to Messrs. Echequran, Quintana & Co., of Mazatlan, says: "Colonel de Lagnel and myself will start down to the port about the 7th proximo, when I will draw a draft on Mr. Garth for $10,000, in favor of Bank of California, and on the latter in your favor for a like sum for my credit. While in Mazatlan I will turn the superintending of the company over to Colonel de Lagnel, who has been appointed to succeed me." Now what do you say in regard to the fact whether you were or were not at Mazatlan in the month of May?

Answer. I was there with General Bartholow; I rode down with him to Mazatlan, but the date I can not give you. The date I suppose is as stated there.

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11. Question. Now, on page 260 of the same document, under date of May 5, 1866, General Bartholow writes to you that he is "too unwell to collect up, credit, and pass same on the books of the company, the wages due the white employees, but that you will find over the name of each employee on the ledger a memorandum of when he commenced work, with the rate of wages to be paid." Is that ledger to which the General alludes in that letter the same book that is here marked Exhibit 24?

Answer. I believe this to be the book, to the best of my knowledge and belief, to which General Bartholow refers.

12. Question. When was it, as near as you can recollect, that you next went to Mazatlan?

Answer. It is impossible for me to answer you; I can not give any dates, sir.

13. Question. Now I ask your attention to page 266 of the same document, to your letter to one Juan Antonio Diaz, dated June 25, 1866, and commencing, "Dear Sir: On leaving for the port fourteen days ago," and I ask you what port or place you mean by that?

Answer. That means the town of Mazatlan; they call it the port of Mazatlan.

14. Question. So that you must have been there some time about the middle of June?

Answer. As this purports to be my own letter, I presume so. It shows positively that I was there about the middle of June.

15. Question. Look at the next two letters, dated Mazatlan, Mexico, the 16th of June, and say whether, after looking at these, you have any doubt?

Answer. I have no doubt that I was there at that time. I do not recollect it, but I have not the slightest doubt.

16. Question. Now, at that time, as near as you can recollect, had the assay to which you have formerly testified as having been made at La Puerta, been made?

Answer. I can not recollect the date of the assay.

17. Question. Now, to refresh your recollection, I read from your testimony before the Senate subcommittee, on page 83 of Senator Dolph's report, No. 2705, Senate, Fiftieth Congress, second session: "Question. Now, how long after you got there (alluding to your arrival at Tayoltita) did you make this assay? Answer. It must have been within a month or six weeks, for the rainy season came on which raised the stream and impeded travel so much that I would scarcely have attempted it in the wet season."

Answer. Well, sir, I can not make any change. I do not recollect the date.

18. Question. Do you still think that it was before the rainy season commenced?

Colonel DE LAGNEL. The assay?

Mr. KENNEDY. Yes, sir.

Answer. That would be my impression. It must have been, for it was made while Mr. Hardy was there, and he went away before the rainy season commenced.

19. Question. Now, do you recollect whether when you were at Mazatlan in the middle of June you wrote to Mr. Garth?

Answer. I can not recollect the date of any letter.

20. Question. But you are sure that you gave Mr. Garth an account of the results of the La Puerta assay?

Answer. I did, and I recollect his answer to me.

21. Question. Now, how do you account for the fact that no such letter of yours to Mr. Garth appears in the letterpress copy book?

Answer. That I can not say, sir, unless it was in a private letter, not a business letter, that I mentioned it. I recollect his reply particularly, as it was the first time that I had ever heard of "salting a mine," and I recollect that he said some such thing might have been done.

22. Question. What was there in your letter to him that made him make such a suggestion to you?

Answer. I can not tell you, sir, for I do not recollect what was in the letter, except that I made that report to him and that I gave him as far as I was able the information, and I recollect him making such an answer.

23. Question. Now, in your letter to Mr. Garth of July 6, 1866, as printed on page 269 of the complainant's bill and exhibits, you say near the bottom of the page, "The ditch, as I said in my last, I look upon as an independent work, and which should have been finished before the rainy season." Now, what letter did you allude to there in that expression "my last?"

Answer. Well, I could not tell you, sir; I can not tell whether it was a private letter or a letter in the letter book.

24. Question. Now, taking it for granted that it is not copied in the letter book, what is your recollection about the fact of having written it?

Answer. I have no recollection in regard to the writing of letters at all, except that one thing fastened itself on my mind—that peculiar expression and circumstance.

25. Question. But you would not have alluded in your letter of July 6, 1866, to your last unless you had written the letter to which you alluded?

Answer. Why, certainly not; oh, no, sir.

26. Question. But what explanation have you to make, if any, for the nonappearance of that letter or any letter——

Answer. To which that can refer in the letterpress copy book, I am unable, at this moment, to tell you, sir.

27. Question. Now please turn to page 275 of the same document, and about the middle of the page you will find in your letter to Mr. Garth that you say that you "have also put gangs (small ones) into the Jalpa and Arsallas, said to be among the richest of the mines." Are those the correct names of the mines? But if not, please state what mines you refer to.

Answer. I presume that those refer to the Talpa and the Arrallan or Arrayan mines.

28. Question. Further down on the same page you say, "With this you will have perceived by the letter in which I inform you they were returned, but changing my mind, contradict the statement on the envelope." Should not that be, "With this you will have received the letter in which I informed you they are returned?"

Answer. I can not tell—I can not make out what this should be.

29. Question. But it is evident to you that there is some misprint or misquotation?

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Answer. I think so, undoubtedly.

30. Question. On page 276, near the top, you say "as to the existence of the Guadalupe store in (blank), it is beyond my power of control." In this blank should be inserted what?

Answer. The blank should be "Revantone."

31. Question. And what store was it to which you referred—what company owned it?

Answer. I think it was the Nuestra and Señora Guadalupe Company.

32. Question. On page 277, at the bottom of the page, in your note of August 25, 1866, to the judge of the first instance of San Dimas, you refer to a suit brought by Mr. J. M. Loaiza, and you say, referring to a summons that had been issued for your appearance, that it will be impossible for you to make that trip. Do you recollect what that suit was for?

Answer. I recollect that there was a notice of a summons, but I could not pretend to say what it was—whether it was an old claim made under the previous administration or not.

33. Question. It was against the company?

Answer. Of course, against the company; not against me.

34. Question. Do you know whether any settlement was made of that claim with Loaiza?

Answer. Without being able to give a determinate answer, my impression is that I settled with him.

35. Question. Do you recollect in what capacity he had been employed by the company?

Answer. I think he had done packing for the company, but I am not positive, as it may have been for some goods sold.

36. Question. Do you recollect whether he was a packer or a freight man?

Answer. At the time I was there I only knew him as a man living in his own house in San Ignace, at which we stopped going and coming that way.

37. Question. You do not know whether he had mules for hire?

Answer. I think he had, for most everybody had.

38. Question. On page 280, about the middle of the page, you say, "In reference to the mines, I have to inform you that we are working in the La Luz, El Cristo, and the Arrallon with the same force as before"——

Answer. That is the mine to which I alluded in connection with the La Talpa.

39. Question. Now, in your examination the day before yesterday you spoke of some difficulty that you had with Colonel Norton as the occasion for employing Granger to keep the books. Please turn to page 283; at the bottom of the page is a letter of yours dated October 8, 1866, to Col. C. E. Norton; please look over that letter and say whether the circumstances alluded to in that letter were the occasion of discharging Norton.

Answer. No, sir; I have no such recollection as will enable me to give a positive answer; but that is simply to recall him from an overstayed leave, I imagine.

40. Question. Please turn to page 287, about one-third of the way down, and look at the paragraph beginning "I notice in your letters the expression of surprise that you do not or had not received more frequent communications from me. It is but just to myself to say that, there being

a mail monthly, it has been my practice to write by every such opportunity." You have no doubt of the correctness of that statement?

Answer. Everything that I wrote in those letters were true as far as I knew.

41. Question. Now, at the top of page 289 you say, "We are dragging along in the dark, and hoping, but not knowing, that any advantage will be derived from the change of rulers. One thing appears clear—that we will not have to pay duties to Imperial customs and then do the same to the Liberal officers." What did you mean in regard to paying duties to the Imperial and the Liberal officers?

Answer. The French and the Imperialists held the port and collected duty there, while the Liberals held the country in which the mines were placed and would demand a tribute oftentimes on the way up, or some times.

42. Question. Near the bottom of page 292 you say, in your letter of the 15th of December, 1866, to Mr. Garth: "It will be observed that the individual accounts differ in some respects from General B.'s statement. This arises from the fact that the statement is drawn from the *ledger up to the 30th April*, tho' General B. continued to hold the books, for settlement and balance, up to the date of his leaving, delivering them to me in Mazatlan." That is your present recollection also?

Answer. Yes, sir; it is so.

43. Question. On page 293, in your letter of the 5th of January to Mr. Garth, a little below the middle of the page, you say "the condition of affairs is not satisfactory; people feel no security, and some of the most wealthy are determined and preparing to leave for Europe, to remain." What did you mean by the phrase "the people feel no security?"

Answer. There was a political change going on. The Imperialists had been in undisputed control, but the Liberals were gaining below and spreading farther and farther we-tward, until they reached the gates of Mazatlan and laid siege to it, and those who had been Imperialists, fearing the resentment of the Government, there having been a report that they would be punished, determined that they would leave the country.

44. Question. Did you have any reference, in using that expression, to any insecurity of person or property?

Answer. Yes, in a general way to person and property of those who had sympathized with the Imperialists.

45. Question. On page 295, in your letter of the 15th of January, 1867, near the bottom of the page, you mention the fact that Colonel Norton leaves in the morning for your place, the letter being addressed to G. A. Nolte, Cosala. Was Colonel Norton at that time still in your employ?

Answer. Yes, sir.

46. Question. Now, on the next page, 296, there is a letter of yours to Colonel Norton himself, dated January 30, 1867. Please read that letter, and see whether that is the time when you discharged Norton and employed Granger to open a new set of books.

Answer. He went away just then, but it was after my return. Upon my return I relieved him as bookkeeper, as nearly as I can recollect.

47. Question. In that letter you say to Colonel Norton: "Mr. Exall I leave in charge during my absence; therefore you need not trouble yourself with anything connected with the establishment." So that this letter of yours discharged Colonel Norton, did it not?

Answer. It was not a discharge. It simply took from his hands the books, and gave him time to make an explanation and set matters right.

48. Question. But it took from him the custody of the books and papers, did it not, for the time being?

Answer. Yes, sir.

49. Question. Now, in the next letter which is printed in this book—yours of January 30 to Mr. Exall—you say to him, referring to Norton: "You will not permit him to have access to the books or papers of any description, nor interfere in any wise with the affairs of the establishment." That was a fact, was it not?

Answer. That was just as stated there.

50. Question. Now, you testified in your examination day before yesterday that you bought the new books at Mazatlan. Please look at page 297, and see whether your letters dated at Mazatlan, February 5, 1867, refresh your recollection as to your next visit to Mazatlan after you discharged Norton.

Answer. It does not refresh my memory at all. I only know what I see here.

51. Question. You have no doubt that you were at Mazatlan on the 5th of February next succeeding your letters of January 30 to Exall?

Answer. These letters are the only evidence that I have, as I know nothing of the dates. If they are veracious records I must have been there.

52. Question. Well, with these records before you, have you any doubt of the fact that you were there at that time?

Answer. Just as I stated before, taking it for granted that these records be true, I have no doubt.

53. Question. Please turn to page 298, toward the close of your letter of February 5, 1867, to Mr. Garth, and look and read the paragraph beginning "The mines are looking better, yielding more and, I believe, richer metal, and the outside attendant expenses of building and improvements will be suspended as soon as the ditch and dam serve their purpose." Is your personal recollection of the situation at the mines the same now as it was when you made that statement?

Answer. I have no recollection whatever; I take it for granted that I wrote that.

54. Question. Now, further down you say "it is difficult to procure transportation in consequence of the seizures, sales, or confiscations that have occurred within the period named." What seizures, sales, or confiscations did you have in your mind when you wrote that letter?

Answer. I presume it related to the seizure of property by the so-called Royalists, Imperialists, or by the Liberals.

55. Question. On page 301 there is a letter of yours, dated March 19, 1867, to Mr. F. Sundell. What acquaintance did you have with that gentleman?

Answer. Very slight, sir. He was the assayer at the other company in San Dimas, the Durango Silver Mining Company, and I met him there on the occasion of a visit; possibly I saw him several times.

56. Question. Was Mr. Sundell at the Durango Company's hacienda at the time that you made the visit to which you referred in your testimony before the Senate subcommittee, as printed on page 109 of Mr. Dolph's report? I will read to refresh your mind.

Answer. I can not tell whether he was there or not, sir.

57. Question. In your testimony before the Senate committee on that point you said that that night was the only night you ever spent in Mr. Rice's hacienda. Have you no recollection of seeing Mr. Sundell at that visit?

Answer. I can not recollect times and persons.

58. Question. Have you any recollection now of anything that makes you think that Sundell was not there?

Answer. No, sir; I do not know when he came or went away. Whether he was there at that time I do not know. I do not even recollect what the season was.

59. Question. Assuming as a matter of fact that Mr. Sundell had been with the Durango Company for a time prior to your arrival in Tayoltita and that he remained subsequent to your departure, then what is your best present impression as to whether Sundell was there on that visit or not?

Answer. I have no recollection whatever, sir; I would not attempt to answer the question.

60. Question. Now, I would like to read to you what you said in regard to that visit: "I recollect one night—the only one night I ever spent in Mr. Rice's hacienda—I recollect on that occasion the sentiment in the town was so hostile that they told me they were expecting an attack at any moment, and were prepared to resist it. That I remember perfectly. I slept in the hacienda that night. As I passed through the town I came—it is a peculiar place to get in; you have to wind up the side of a formation that can be barred by a dozen men; you go through a deep ravine and then to the hacienda, so that people in the town would look down into Rice's hacienda below. These explosions only occurred, I may say, when they were possibly half full of liquor, but that is very frequently. That night I could hear, as I lay down to sleep, the cries of these people, blackguarding and cursing the people in that hacienda." Now, when you said "they" were expecting an attack any moment, and were prepared to resist it, whom did you mean by "they?"

Answer. Rice, and others in his hacienda.

61. Question. What was Sundell?

Answer. He was the assayer, as far as I can recollect. He may have had some other duty, but I do not recollect it.

62. Question. Have you ever had any communication with Mr. Sundell since you left Tayoltita?

Answer. Never seen or heard of him, except in the mention made in this court in these proceedings.

63. Question. Did you know Alfred A. Greene?

Answer. I do not remember any such person.

64. Question. Do not remember having any correspondence with him?

Answer. Do not recollect of any.

65. Question. Do you know James E. Slaughter?

Answer. I have met him personally within the past few years, and had letters from him with regard to this case. I met him at a funeral.

66. Question. About what year was it in which you had these letters from him in regard to this case?

Answer. In the years 1870–1879, I think; what year I can not tell positively.

67. Question. Have you preserved these letters?

Answer. No, sir; I do not keep letters of that sort; in fact, I do not keep letters of any sort.

68. Question. Do you recollect destroying these letters?

Answer. I do not know, but I dare say that I did. Mr. Lines wrote to me, at the same time, very much the same letter; I do not know, but I think I answered it, but what became of it afterwards I do not know.

69. Question. About how many letters did you receive from General Slaughter?

Answer. Never but the one, as far as I recollect; I do not recollect but the one.

70. Question. When you said a moment ago that you had received letters from General Slaughter, you meant to say "a letter?"

Answer. A letter.

71. Question. Now, how long do you think that it was before your appearance in San Francisco as a witness in this case, that you had a letter from General Slaughter or Mr. Lines?

Answer. I could not tell you the year or month, sir.

72. Question. Have you any doubt that you heard from General Slaughter before you made your deposition in San Francisco?

Answer. I could not tell you when it came, sir; I could not tell you.

73. Question. Had your attention been drawn to this case of Mexico against the La Abra Company, or the La Abra Company against Mexico, before you heard from General Slaughter?

Answer. Well, I do not know which one reached me first, whether Mr. Lines's or General Slaughter's, and I had no knowledge of anything before receiving these letters.

74. Question. And you do not recollect which of these letters you received first?

Answer. No, sir.

75. Question. Do you recollect how long an interval there was, in a general way, between the time you received these letters and the time when you made your deposition in San Francisco?

Answer. I do not.

76. Question. Was it a month?

Answer. I could not tell you whether a month or a year; I simply know the fact that they came and my action and there is nothing further about it.

77. Question. Will you please look at page 147 of Exhibit 29, and say if you know in whose handwriting the entries are?

Answer. That is too regular for Granger's handwriting; I presume it is Granger's, but my recollection, if there is any recollection at all, is that there was a trembling in it.

78. Question. You are sure it is not Exall's?

Answer. I could not say whose it is.

79. Question. Does it look anything like Exall's handwriting?

Answer. I do not recollect anything about it.

80. Question. Did you not identify the letterpress copy book as containing letters in the handwriting of Exall?

Answer. Doubtless I did, but I won't say. As you asked the question, doubtless you know. There may be something that I recognized of his, and you may show me other handwriting that I could not.

81. Question. Now look at the original letterpress copy book on the page, where a letter commences, dated at Mazatlan, January 5, 1867, addressed to Mr. D. J. Garth, and say if you know in whose handwriting it is?

Answer. That is my own handwriting—I am sure it is.

82. Question. Now look at the handwriting on page 144 of the letterpress copy book, and see whether you recognize it?

Answer. I should never recognize the handwriting—I am not familiar enough with it.

83. Question. Please look at the handwriting on page 149, in Spanish, and say whose it is, if you know?

Answer. It is my signature, while the body of the letter is not mine.

84. Question. Whose is it?

Answer. That I could not tell you.

85. Question. Now look at the letter on page 155, without turning over the page, and see whether you recognize the handwriting?

Answer. No, sir; I do not.

86. Question. Will you look at pages 159, 160, 161, 162, and 163, and see whether you recognize the handwriting?

Answer. No, sir; I do not—I could guess at it.

87. Question. Did you ever see handwriting like that before?

Answer. Every handwriting has certain peculiarities; there is one here as to the bottom of the "j;" I should think that it was Granger's, but I am not certain.

88. Question. Now will you look at page 189, with the signature being concealed, and say in whose handwriting you think it is?

Answer. No, sir; I could not tell you.

89. Question. Look at page 188 and see if you know in whose handwriting it is, apart from the signature and from the subject-matter?

Answer. No, sir; I do not know.

90. Question. Now I invite your attention again to pages 146, 147 of Exhibit 29, and I ask you to say, after having looked at these other exhibits, whether you had any doubt that these pages are in the handwriting of Granger?

Answer. I am not positive that they are. I would not know it if I were asked outside of this.

91. Question. What dates do you find on these pages?

Answer. On page 146 the dates run fron May, 1866, to March, 1867; page 147, from May 1, 1866, to March, 1867.

92. Question. About how long before you left, as near as you can recollect, did Granger have charge of the books?

Answer. I could not tell you, sir. In the spring sometime, I think.

93. Question. Now look at Exhibit No. 30, the first page, and see whether you recognize the handwriting?

Answer. No, sir; I could not say whose it was.

94. Question. Were your instructions to Granger to open an entirely new set of books, so that the transactions of the company from the beginning of its enterprise at Tayoltita would appear on the new books?

Answer. While not recollecting what instructions I gave him, my impression is that I purposed the new books should cover the whole

thing—the others being incomplete, that he should go back to the original matters—from the bills and papers, from which he could get the original information.

95. Question. You said in your examination the day before yesterday that you found certain erasures in the books that had been kept for General Bartholow——

Answer. No; the erasures were in entries that Norton had made in those books after General Bartholow had gone. It was in his own work (Norton's) that these erasures were found.

96. Question. Now, will you take these books, Exhibits 22, 23, and 24, in their order, and point out the erasures to which you referred or any of them?

Answer. I could not tell you; there are numerous erasures there, and I could not tell you to which I referred.

97. Question. Will you point out any of the erasures?

Answer. The ledger is the only book to which I gave attention; it is No. 24. The first thing was the paper he prepared—a large statement. There are erasures on page 52, accounts of building machinery. There is another one in the account of E. P. Terwilliger, page 58.

98. Question. What is the date of that erasure?

Answer. May 1. You will find erasures again in the merchandise account, page 114. Erasures again in November; it must have been 1866. Again we have corrections—I can not tell what it is—page 116, an amount marked over 26 or 28; you can not tell what it is. On page 118 you will find erasures again. Cash account, on page 120, you find numerous ones. On page 122 there are still more. I can show more, if necessary.

99. Question. Now, after having looked over these erasures, are you prepared to say that it was on account of these, or that these were part of the reasons why you took the bookkeeping from Norton and gave it to Granger?

Answer. Because it satisfied me that he was neither competent nor trustworthy.

100. Question. Will you look at Exhibit No. 41, headed "Cash account," a single sheet, and say whether you recognize the handwriting?

Answer. That is Norton's work, sir.

101. Question. Now, will you look at Exhibit No. 31, a portion of a mutilated journal, and say whether you recognize the handwriting? Look at the first page, please; the headings, items, and dates.

Answer. This is a part of General Bartholow's original journal. October, 1865, is the date at the head of the first page.

102. Question. In whose handwriting is it?

Answer. Finding it here and the subject-matter being familiar, I say it is General Bartholow's, knowing that he was the only one having it and it being in his hands at that time.

103. Question. Was that one of the books that was delivered to you at Mazatlan?

Answer. The journal was turned over to me; whether at Mazatlan or left behind, I cannot say, but I think he would have taken it with him. I do not think he would have taken the ledger down alone, and I think he took this with him at the same time.

Recross-examination by Mr. KENNEDY:

Question. Have you not testified that, according to your best recollection, you instructed Granger to open a set of books that would show correctly the transactions of the company from the time it commenced its operations at Tayoltita?

Answer. I don't recollect, really, what I have testified to. I think I said that my purpose was to have that done, and I judge that that was done.

Question. Now, look at the first entry in Exhibit 26, and notice the date, and then say——

Answer. That book I didn't testify to; I don't recognize it.

Question. Now, look at Exhibit 28, on page 26, and state at what date the account on that page commences.

Answer. 1867—December; that is not the year I was there.

Question. Now, look at the next page—page 27—and say what is the date.

Answer. It is April, 1867; and January, 1868, is the last item.

Question. Now turn to the next account, on page 29, and mention the date.

Answer. It is a profit and loss account, dated April 1, 1867.

Question. Now, could that Exhibit 28 possibly be one of the books that you instructed Granger to open, having reference to the dates?

Answer. It scarcely seems so, sir. I hadn't looked at those dates before.

Question. Now look at Exhibit No. 30, page 1, and state what date you find.

Answer. The date is April, 1867.

Question. Now, could No. 30 possibly be one of the books that you instructed Granger to open?

Answer. This is the journal. The dates are not right, sir.

Question. Would not the new books, if your instructions had been carried out, have shown the operations from the commencement?

Answer. That is what I desired—a new set of books that would take up General Bartholow's work as far as it had been entered without alteration or variation.

Question. Now, referring again to Exhibit No. 31, which you have described as part of the original journal, would not the books that you instructed Granger to open have covered all of these transactions?

Answer. That was my design, sir; that was my purpose.

Question. Can you state whether you made any entry or ordered any entry to be made in your expense account, when you came back from Mazatlan with the new books, to show what you had paid for them?

Answer. I could not tell you, sir.

Question. Do you remember from whom you bought them?

Answer. No, I don't remember that; I couldn't tell, sir.

Question. How many were there of them?

Answer. I bought three books.

Question. You have testified that Exhibit No. 26 is not one of them.

Answer. I did not say that it was not one; I said I could not recognize any of them.

Question. Have you not testified that from the subject-matter of this book it could not possibly be one of the three books that you instructed Granger to open?

Answer. Really, if I did say so, it is in the record; but I don't remember what I said.

Question. What is your best present recollection as to whether the book you hold in your hand, Exhibit No. 26, is one of the three books that you instructed Granger to open?

Answer. That I couldn't tell you, sir; I can't recollect.

Question. Well, from the subject-matter of the book, have you any idea whether it is or is not one of the three books that you instructed Granger to open?

Answer. I didn't recognize the book yesterday. There is a matter in it that covers a portion of the time that I was there—the last few days—but I don't know anything about it.

Question. Do you recollect ever going to Mazatlan from the mine with Mr. Rice and Francisco Torres?

Answer. I don't remember him there. I have ridden frequently back and forward with Mr. Rice, sometimes up and sometimes back, but I do not recollect Torres.

Question. Have you no recollection of a Mexican miner by the name of Francisco Torres?

Answer. An ordinary miner you mean, or a wealthy man?

Question. A man of some means. He testified in the Senate investigation that he worked one of the company's mines with Granger in 1873, long after you had left.

Answer. I do not recollect him, sir, at all.

Question. If you had made a journey with Mr. Rice and a Mexican miner or mine owner to Mazatlan, would you not be likely to remember it?

Answer. Not necessarily, sir.

Question. Do you remember going in company with Mr. Rice from the mines to Mazatlan?

Answer. Coming up, several times; going down, it does not occur to me.

Question. You have no recollection of having made a trip down with Mr. Rice?

Answer. No, sir; I don't remember it; have no recollection of it at all.

Question. I want to ask you whether you remember a man by the name of Seth Rice?

Answer. I heard of him, but never saw him. I recollect simply of the same name, but who he was I don't remember. I heard of him there.

Question. He never was in your employ?

Answer. No, sir; I don't think he was.

Redirect examination by Mr. LINES:

Question. Colonel, do you remember how long Mr. Granger was at work on his new set of books?

Answer. No; I couldn't tell you, sir.

Question. Did you exercise any supervision over them at all?

Answer. I did not pretend to control him in the work, because I didn't feel competent. If I felt competent I would have gone to work myself. I appealed to him in the most earnest terms, and he knew I was almost

crazy, and he assured me that everything would be right. I gave him $100 for making those books.

Question. While he was at work on those books was the ordinary book-keeping of the daily transactions suspended?

Answer. No; there was a blotter in the store of all affairs that occurred there. Expenditures did not occur so frequently that it was necessary to work daily at the books.

Question. Well, do you remember whether or not the ordinary books were kept right along by Mr. Granger?

Answer. Granger had all of them in the desk, and I suppose he kept them; I don't know.

Question. Do you recollect whether your instructions included copying into the new books the entries in the daybook or in the journal that were kept by Mr. Bartholow?

Answer. There was never any daybook kept other than a blotter in the store of the little sales and disbursements there; but he made all his original entries in the journal, which was just as easy, and from there transferred them to his ledger. This book, marked 26, is really a counter blotter.

Question. This one, marked 28, you will notice is in a ledger form. There are entries and there is an index, and in most cases the earliest date is April 1, 1867. Now, on page 92 appears an account of Thomas J. Bartholow—of course, Mr. Bartholow was not there in 1867—"Thomas J. Bartholow, by amount transferred, $128.65." My question is, did you instruct Granger to transfer accounts from the old ledger to the new ledger?

Answer. I can not remember my instructions to him, but my intent was to have everything plainly set forth so that it would be clear and well understood. I testified just now, if I recollect, that I did tell him, but I won't be positive that I did tell him that, sir; I can't recollect. The balances due he would naturally bring over. It is too great a length of time to ask a person, in reason, to recollect.

Question. Well, here is another entry, on page 36, "To amount transferred, $50,700." You can not recall whether it was your instructions to open accounts in that manner?

Answer. I can't possibly say; I won't pretend to say. When I spoke my impression was that the whole thing was to be presented, but whether I told him to do that I can't say; but that was the idea I had on seeing the books, that the whole thing was there. I had no idea that they were so limited.

Question. Can you say that there is any book which was kept at the mines that is not here, in whole or in part, before you?

Answer. All except the original ore books, in which the receipts were entered from time to time; and then the journal is here, in part.

Question. Now, Colonel, what was the character of the ore books; were they intended to be permanent?

Answer. They were nothing but temporary guides as to the amount on hand. When the ore was brought in the clerk adjusted the scales and weighed each sack. These weights were entered in the book in pencil and it was then hung up alongside the bookkeeper's desk.

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Question. In what shape were they entered in pencil?

Answer. The weights were given.

Question. Now, please look again at Exhibit No. 40, purporting to be a record of all ores delivered at the hacienda from 1865 to 1867, and state whether you have any doubt, so far as the entries covered the dates of your administration, that it is what it purports to be.

Mr. KENNEDY. The objection to that is that it calls for a construction from the witness that he can not properly give.

Answer. I am satisfied that it may be relied on as far as it goes, because of that entry by myself there. I had it under examination.

Recross-examination by Mr. KENNEDY:

Question. Do you see any entry there about ores from Talpa?

Answer. No, sir; I don't.

Question. Do you see any entry there about ores from Arrayan?

Answer. No, sir; only from the two mines La Luz and El Cristo.

Question. So that the record can not be a complete record if, as your letters to Garth say, you took out ores from Talpa and Arrayan?

(No answer.)

Mr. LINES. Were those ores delivered at the hacienda?

Answer. Yes, sir; they all came to the same place.

Question (by Mr. KENNEDY). Now, let me ask you if you find any record of ores from La Abra?

Answer. No, sir; there is no record that I see. I see no record except from the two mines El Cristo and La Luz.

Question. In whose handwriting is that exhibit?

Answer. It is in various handwritings, sir.

Question. Do you recognize any of the handwriting?

Answer. I can guess whose it is, but I can not tell you. That is Norton's, undoubtedly, on the first page.

Question. Now look at the next page.

Answer. That is the same handwriting.

Question. The next?

Answer. That is.

Question. The next?

Answer. That is.

Question. Now, turn over again, down to January 1, 1867.

Answer. The next, I don't know whose that is.

Question. What is the date there?

Answer. January 1, 1867.

Question. Who was keeping your books then?

Answer. Norton.

Question. Look at the next page; do you recognize that handwriting?

Answer. April 1, 1867, begins a new hand.

Question. Whose handwriting do you think it is?

Answer. It think it is Granger's from April 1, 1867.

Question. Now, the next page; what is the date of that page?

Answer. That is July, 1867; that is all the same, I think.

Question. Now, the next page?

Answer. That is the end of it.

Question. What is the last date?

Answer. The last date is July 19, 1867, as far as I can make it out; there is no year appended, but running along in regular order, I make it out July.

Mr. LINES, counsel for complainant, gives notice that, with the exception of the redirect examination of witnesses who have testified in chief, but have not yet been cross-examined, and reserving the right to call David J. Garth and Sumner Stow Ely, in case those witnesses are not produced by the defense and examined, the evidence in chief for the Government is now closed.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do, to state it, says, I do not.

JULIUS A. DE LAGNEL.

Motion for an order on the Secretary of State.

Comes now the complainant, by Robert B. Lines, special assistant to the Attorney-General, and moves the court for an order on the Secretary of State requesting him to furnish, for use as evidence in the above-entitled cause, copies of all assignments, appearing of record in the Department of State, of interests in the claim of La Abra Silver Mining Company *v.* Mexico, or of alleged interests in the award made by the United States and Mexican Mixed Commission in respect of such claim.

ROBERT B. LINES,
Special Assistant to the Attorney-General.

Reply of Secretary of State.

For value received I hereby sell, assign, transfer, and set over in severalty all and singular, as follows: One undivided sixth part of the interest which I now have in and to the claim described in the annexed instrument as executor of the last will and testament of Herman Camp, deceased, to Katie L. Hatch (formerly Katie L. Harrington), now of Plummer, Venango County, Pa., and one undivided sixth interest or part of said claim to Edward M. Harrington (one of the legatees named in the said will of the said deceased Herman Camp), now residing at Colo, in the State of Iowa;

To have and to hold the said interests hereby assigned for their own benefit and behoof forever, subject, nevertheless, to all the provisions, contingencies, and conditions contained in the contracts annexed to the said assignment.

Witness my hand this 27th day of November, 1883.

C. C. CAMP. [SEAL.]

STATE OF NEW YORK,
Chautauqua County, ss:

On this 27th day of November, 1883, before me, came Cyrus C. Camp, to me personally known to be the person who signed the foregoing instrument, and who acknowledged the execution thereof.

[SEAL.] C. D. MURRAY,
Notary Public in and for said Co.

For value received I hereby sell, assign, transfer, and set over all and singular, as follows: The undivided two-third part of the interest in the whole of the claim described in the annexed instrument (this being the whole amount of said claim yet unconveyed), as executor of the will and testament of Herman Camp, deceased, to Ellen V. Camp, now of Fredonia, N. Y., to have and to hold the interest hereby conveyed for her own benefit and behoof forever, subject nevertheless to all the provisions, contingencies, and conditions contained in contracts annexed to said assignment.

Witness my hand the 10th day of January, A. D. 1893.

C. C. CAMP.

STATE OF NEW YORK,
County of Chautauqua:

On this 1st day of February, A. D. 1893, before me came, Cyrus C. Camp, to me personally known to be the person who signed the foregoing instrument, and he acknowledged that he executed the same.

[SEAL.] C. ABBEY, *Notary Public.*

This instrument, made on the 15th day of November, A. D. 1876, between *Sumner Stow Ely*, of the city of New York, of the first part, and Herman Camp, of Rouseville, Venango County, Pennsylvania, of the second part.

Whereas La Abra Silver Mining Company, a corporation created under the laws of the State of New York, prosecuted its claim against Mexico before the American and Mexican Joint Commission and the umpire at Washington, D. C., appointed under the treaty of July 4th, 1868, and the extensions thereof made between the United States of America and the United States of Mexico, which claim was No. 489 on the docket of said commission; and whereas an award was made on said claim by Sir Edward Thornton, the umpire, which award is dated December 27th, 1875, and was filed with the clerk of said commission at Washington aforesaid on or about December 29th, 1875, and is in favor of said company for the sums, and the interest thereon, specified in said award, a copy of which is hereto annexed; and whereas said company, by an instrument in writing executed under its corporate seal and the signatures of its president and treasurer, and duly proven, dated December 19th, 1874, sold, assigned, transferred, and set over one equal undivided twentieth part of the award to be made on said claim under said treaty to Thomas H. Nelson, his heirs and assigns; and whereas the said Nelson, by an instrument in writing dated December 28th,

1875, duly executed under his hand and seal and proven, sold, assigned, transferred, and set over the aforesaid equal undivided one-twentieth part of said award to the said Sumner Stow Ely, and his assigns:

Now this instrument witnesseth, that the said Sumner Stow Ely, for and in consideration of the sum of nineteen hundred and seventy dollars, to him in hand paid by the said Herman Camp, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does sell, assign, transfer, and set over to the said Herman Camp an interest in said one-twentieth part of said award to the amount and extent of thirty-nine hundred and forty dollars; to have and to hold said interest in said twentieth part of said award to the amount and extent aforesaid, to the said Herman Camp, his heirs and assigns, forever.

And the said Ely hereby covenants with the said Camp, his heirs, executors, administrators, and assigns, that he, said Ely, has not done or committed any act, matter, or thing whereby, or by means whereof, the aforesaid, interest in said twentieth part of said award has been or can be in any wise charged or encumbered, and that he has not assigned or transferred the said interest except by this instrument.

In witness whereof the said party of the first part has hereto set his hand and seal the day and year first above written.

SUMNER STOW ELY. [SEAL.]

Sealed and delivered in presence of—
ADOLPH SCHLEICHER.

STATE OF NEW YORK,
City and County of New York, ss:

On this twentieth day of November, A. D. 1876, before me, personally came Sumner Stow Ely, to me known, and known to me to be the same person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

[SEAL] ADOLPH SCHLEICHER,
Notary Public, N. Y. County.

$767.] NEW YORK, *Oct.* 18*th*, 1879.

Received on the within assignment of Sumner Stow Ely the sum of seven hundred and sixty-seven dollars, part of the first three installments paid by Mexico in the case of La Abra Silver Mining Co., mentioned in said assignment.

C. C. CAMP,
Sole Executor of H. Camp, deceased.

Received on the within assignment of Sumner Stow Ely the sum of two hundred and eighty-one $\frac{83}{100}$ dollars, part of fourth installment paid by Mexico upon the award mentioned in said instrument.

C. C. CAMP,
As Executor of H. Camp, dec'd.

ROUSEVILLE, *Oct.* 15, 1880.

(Endorsed on back:) Sumner Stow Ely and Herman Camp.

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"La Abra Silver Mining Company" *vs.* Mexico, No. 489.

DECISION OF THE UMPIRE.

With reference to the case of "La Abra Silver Mining Company *vs.* Mexico," No. 489, the umpire is fully satisfied, and can not doubt that the company is entitled to be considered a corporation, or company, of citizens of the United States, in accordance with the terms of the convention of July 4th, 1868, having been duly chartered in conformity with the laws of the State of New York.

He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing, and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful, or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring capital into it and raising up industrial establishments of all kinds. With this view, it issued proclamations encouraging the emigration of foreigners, and promising them certain advantages and full protection. It can not be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the district in which their mines and works connected with them were situated did not fulfill the engagements entered into by their Government, but, on the contrary, behaved towards them in an unfriendly and hostile manner.

The ground of their claim is that these hostilities were carried to such an extent that they were finally compelled to abandon their mines and works and to leave the Republic.

The evidence on the part of the claimant is, in the umpire's opinion, of great weight. The witnesses are for the most part highly respectable, and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defence, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government and to which they were entitled by treaty, not only themselves showed a spirit of bitter hostility to the company, but encouraged their countrymen, who were employed by the claimants, in similar behavior, and even frightened them into refusing to work for their American employers.

The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted, or even weakened, by the evidence submitted by the defence. On the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and finding his efforts in

vain, he appealed through a lawyer of high character to the highest authorities in the State, who declined to interfere in the matter.

To suppose that, when so determined a spirit of hostility on the part of the local authorities—one of whom was the gefe politico, who wielded great power—and so much indifference by the State government were displayed toward the claimants it would be of any avail to appeal to the courts of justice—would be puerile.

In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

The umpire is of opinion that the Mexican Government, which, with a spirit of liberality which does it honor, encouraged all foreigners to bring their capital into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities.

What the amount of this compensation should be it is very difficult to decide.

The umpire is of opinion that the claimants should be reimbursed the amount of their expenditures, and also the value of the ores extracted which they were forced to abandon, with interest upon both these sums.

He can not consent to make any award on account of prospective gains, nor on account of the so-called value of the mines.

Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come to an end either from the exhaustion of the veins or from flooding, or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are in fact the interest upon the sums invested; they may be greater or less, or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mine must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is in the opinion of the umpire equally inadmissible that the Mexican Government can be called upon to pay a value the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business, and on the amount of ores reduced and of those extracted and deposited at the reduction work, is a further compensation which, in the opinion of the umpire, that Government ought to pay.

The evidence of George C. Collins with regard to the amount invested is clear and straightforward. He states it from subscriptions and sales of stocks to be $235,000; lent and advanced, $64,291.06; due for rent, expenses, salaries, law expenses, &c., $42,500; total, $341,791.06.

Any so-called "forced loans" and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants

of the country. The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations can not proceed.

To the above-mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores.

The umpire is satisfied, from the reputable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, nor, indeed, such proofs as might have been produced, that the number of tons stated by the various witnesses were actually at the mill or at the mines at the time of the abandonment. In so well regulated a business as the umpire believes that it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction. The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore must necessarily be vague and uncertain, and that of its actual average still more so. Still the umpire is strongly of the opinion that the claimants are entitled to an award upon this portion of the claim.

He will put it at $100,000. It is possible that this is much less than the real value of the ores; but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award.

Neither should interest be allowed on this amount so soon as on the others; for the reduction of the ores would have taken time, say a year.

It is not shown that the company had received any dividends before the period of the forced abandonment of the mines, about March 20th, 1868. Neither ought interest to be awarded before that date.

The umpire therefore awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of *three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents* ($358,791.$\frac{06}{100}$), with an annual interest of six per cent from March 20th, 1868, to the date of the final award, and further, the sum of *one hundred thousand Mexican gold dollars* ($100,000), with the same interest from March 20th, 1869, to the said date of the final award.

(Signed) EDW'D THORNTON.

WASHINGTON, *December* 27, 1875.

Received on the within assignment of Sumner Stow Ely the sum of two hundred and eighty-one $\frac{83}{100}$ dollars, part of fourth installment paid by Mexico upon the award mentioned in said instrument.

C. C. CAMP,
As executor of H. Camp, dec'd.

ROUSEVILLE, *Oct.* 15, 1880.

Know all men by these presents:

Whereas an award for $683,041.32 was rendered in favor of La Abra Silver Mining Company (a corporation created under the laws of the State of New York, and having its office in the city of New York) against the Republic of Mexico by Sir Edward Thornton, the umpire of the Joint Claims Commission, under the treaty between the United States and Mexico of July 4, 1868, and the treaties supplemental thereto, in the case numbered 489, on the docket of said commission, which award is payable in installments out of moneys payable annually by Mexico to the United States under said treaties, as by reference to said award on file in the Department of State of the United States, and to said treaties, and to the act of Congress relating to the distribution of said moneys, approved June 18th, 1878, will more fully and at large appear; and whereas the first five installments on said award have been paid, and the annual payments in the years 1882, 1883, and 1884 have been made by Mexico to the United States, out of which the sixth, seventh, and eighth installments, respectively, on said award are payable, but the money remains in the hands of the Secretary of State of the United States unpaid on said award; and whereas Alonzo W. Adams, of the city of New York, has rendered and will continue to render, in all proper and lawful ways, his professional services to obtain payment of said moneys so in the hands of the Secretary of State as aforesaid, and of the future installments on said award:

Now, we, said La Abra Silver Mining Company, for and in consideration of said services, and of the premises, and also of one dollar, lawful money of the United States, to us, said company, in hand paid by said Adams, the receipt of which is hereby acknowledged, hereby grant, assign, transfer, and set over to the said Alonzo W. Adams, his heirs, legal representatives, and assigns, an interest to the extent and amount of thirty thousand dollars in the award aforesaid: Provided, nevertheless, and this assignment is made upon these express conditions, to wit:

1st. The said thirty thousand dollars shall be payable to the said Adams, his heirs, legal representatives, or assigns, and be taken, in and by installments and not otherwise, out of the annual installments so payable upon said award as aforesaid, as the same shall be from time to time payable to said company, beginning with and including the sixth installment on, said award, the money for which (together with that for the seventh and eighth installments) is in the hands of the Secretary of State as aforesaid, and each said installment on said thirty thousand dollars shall be one equal ninth part of said sum of thirty thousand dollars unless, for any reason, the number of annual payments to be made hereafter by Mexico as aforesaid, together with those made in said years 1882, 1883, and 1884 as aforesaid, shall be less than nine, in which case the respective installments on said sum of thirty thousand dollars shall be proportionately increased in amount.

2d. If the total amount of said award shall be reduced in any way except by payments thereon, then the said interest of thirty thousand dollars shall be reduced proportionately, and the amount to which it is thus reduced shall then be deemed the amount of the interest hereby assigned, and thenceforward the annual installments thereon shall be reckoned and paid accordingly, and if any of the future installments on said award including therein said sixth, seventh, and eighth installments should not be paid

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on said award, or be paid only in part, then the corresponding installment or installments on the interest hereby assigned shall be abated totally, or partially and proportionately, according as the case may be; and

3d. Should the amount paid on the hereby assigned interest be less than the amount of said interest, no claim or demand shall, by reason thereof, arise or be made against said company.

In witness whereof, we, said La Abra Silver Mining Company, have caused our corporate seal to be hereto affixed, and these presents to be signed by our president and secretary this first day of February, A. D. 1884, at the city of New York.

A. H. GIBBES, *as Presdt.*
SUMNER STOW ELY, *as Secretary.*

Sealed and delivered in the presence of—
JAS. W. HALE. [SEAL.]

STATE OF NEW YORK,
City and County of New York, ss:

On this 1st day of February, A. D. 1884, before me personally came Alfred H. Gibbes, the president, and Sumner Stow Ely, the secretary, of La Abra Silver Mining Company, a corporation, both to me well known, who being by me severally duly sworn did, each for himself, depose and say, that said Gibbes was the president of said company, and resided in Newark, New Jersey; that said Ely was the secretary of said company, and resided in said city of New York; that he knew the common seal of said company, and that the seal affixed to the within and foregoing instrument was said common seal, and that it was affixed to said instrument by direction of the board of trustees of said company, and that he signed his name to said instrument as said officer by the like direction.

[SEAL.]

JAS. W. HALE,
Public Notary, 4 Hanover Street.

We, the undersigned, president and secretary of La Abra Silver Mining Company, do hereby certify that the assignment made by said company to Alonzo W. Adams, assigning to him an interest to the amount of thirty thousand dollars in the award rendered in favor of said company against Mexico by Sir Edward Thornton, the umpire under the treaty of July 4, 1868, which assignment bears date February 1, 1884, was executed and proved and then delivered to said Adams in pursuance of and compliance with resolutions of said company unanimously adopted at a called meeting of the board of trustees of said company, at which meeting a quorum of said trustees attended and voted.

Witness our hands and the seal of said company this nineteenth day of March, A. D. 1884, at the city of New York.

[SEAL.]

A. H. GIBBES, *Presdt.*
SUMNER STOW ELY, *Secretary.*

(Endorsed on back:) Assignment: La Abra Silver Mining Company to Alonzo W. Adams. Interest in award against Mexico. Dated Feb'y 1, 1884.

Know all men by these presents that we, La Abra Silver Mining Company, a corporation created under the laws of the State of New York, and having our office in the city of New York, for and in consideration of one dollar, and other good and valuable considerations to us in hand paid by Alonzo W. Adams, of the city of New York, and of the services heretofore rendered by him for said company as their attorney in fact, the receipt of which is hereby acknowledged, and in pursuance of a resolution of the board of trustees of said company, have bargained, sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over to the said Alonzo W. Adams, his heirs and assigns, an interest to the extent and amount of one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents, in the award for $683,041.32 gold dollars made in our favor against Mexico by Sir Edward Thornton, the umpire, under the convention between the United States and Mexico of July 4, 1868, and the conventions supplementary thereto, in the case numbered 489 on the docket of the commission established under said conventions, provided, nevertheless, and this assignment is made upon these express conditions, to wit:

1st. The said one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents shall be taken, in and by installments and not otherwise, out of the moneys payable annually by Mexico to the United States under said conventions, which are applicable to said award, including therein and beginning with the moneys now in the hands of the Secretary of State of the United States applicable to said award so paid by Mexico in January, 1880, and each said installment shall be one-eleventh part of said sum of one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents, unless for any reason the number of said annual payments to be made hereafter by Mexico, together with the one made in January last, shall be less than eleven, in which case said annual installments shall be proportionately increased; and

2d. In case the total amount of said award shall be reduced by treaty, legislation, new trial, or in any way except by payments, then the said sum of one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents shall be diminished to the extent of, and by one-third of, the amount of, such reduction; and in case the total amount to be paid upon said award, including therein the moneys now in the hands of said Secretary of State applicable to said award, is less, or in any way except by payments thereon shall become less, or shall be greater, than the sum of five hundred and eleven thousand five hundred and twenty-three dollars and seventy-seven cents (which sum has been taken as the basis to determine the amount to be assigned hereby) then one-third of the difference between said amount and said last mentioned sum shall be deducted from said sum of one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents or added thereto as the case may be; and in each or either of said cases, from and immediately after such diminution or increase of the amount first herein above mentioned, that amount as thus diminished or increased shall be deemed and taken as the amount assigned by this instrument, and thenceforward the annual installments thereon shall be reckoned and taken out accordingly.

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In witness whereof we, said La Abra Silver Mining Company, have hereto set our corporate seal and caused these presents to be signed by our president and secretary this first day of July, A. D. 1880, at the city of New York.

A. H. GIBBES, *Presdt.* [SEAL.]
SUMNER STOW ELY, *Secretary.*

Sealed and delivered in presence of—
THOS. T. SHERMAN.

STATE OF NEW YORK,
City and County of New York, ss:

On this second day of July, eighteen hundred and eighty, before me personally appeared Alfred H. Gibbes and Sumner Stow Ely, with both of whom I am personally acquainted, and which said Alfred H. Gibbes is known to me to be the president, and which said Sumner Stow Ely is known to me to be the secretary of the La Abra Silver Mining Company, the corporation described in and which has executed the foregoing instrument, who, being by me severally duly sworn, did depose and say that the said Alfred H. Gibbes resides at Newark, in the State of New Jersey, and that the said Sumner Stow Ely resides in the city of New York; that the said Alfred H. Gibbes is the president and the said Sumner Stow Ely is the secretary of the said La Abra Silver Mining Company, the corporation described in and which executed the said foregoing instrument, and that each of them knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and was affixed thereto by authority of said corporation, and that the said Alfred H. Gibbes subscribed his name thereto as such president, and the said Sumner Stow Ely subscribed his name thereto as such secretary by the like authority.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

[SEAL.] THOS. T. SHERMAN,
Notary Public, Westchester Co., with Cert. in N. Y. Co.

Received, New York, Feby. 5, 1881, three assignments from La Abra Silver Mining Company, one to F. P. Stanton for $6,166.66⅔, one to T. W. Bartley for the same amount, and one to W. W. Boyce for $8,666.66⅔, together amounting to twenty-one thousand dollars, which amount is to be credited on the foregoing assignment if the said assignments are accepted by them, but otherwise not, and this receipt shall be void and of no effect.

A. W. ADAMS.

(Duplicate receipt for the above signed for co., and now in possession of S. S. Ely.)

(Endorsed on back:) Received New York, January 31st, 1881, from the Abra Silver Mining Company, upon the within assignment, thirteen thousand two hundred and fifty dollars and sixty-five cents ($13,250.65), by and through the State Department of the U. S., or Wm. M. Evarts,

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Secretary of State for the United States, in accordance with a decree of the supreme court of the Dist. of Columbia in the case of Bartley & Stanton *vs.* A. W. Adams et al.

A. W. ADAMS.

S. S. Ely holds duplicate of this receipt.

NEW YORK, *March 7th*, 1881.

Received this day upon the within assignment eleven thousand seven hundred and seventy-five dollars and twelve cents, being my pro rata part of the 5th instalment paid by Mexico upon said award of the Abra Silver Mining Company.

A. W. ADAMS.

($11,775.12/100.)

To all to whom these presents shall come, greeting:

Whereas by the instrument hereto annexed, bearing date the first day of July, eighteen hundred and eighty, La Abra Silver Mining Company, for the considerations therein mentioned, did sell, assign, and transfer to Alonzo W. Adams an interest to the extent and amount of one hundred and forty-five thousand seven hundred and fifty-seven dollars and twenty-three cents in the award for six hundred and eighty-three thousand and forty-one dollars and thirty-two cents in favor of said company against Mexico in said annexed instrument described; and the said award is payable in installments out of moneys payable annually by Mexico to the United States, under the conventions mentioned in said annexed instrument, and which moneys are to be paid over and applied by the Secretary of State of the United States, as by reference to those conventions and the act of Congress relating to the distribution of said moneys, approved June 18, 1878, will fully and at large appear; and whereas the first five installments on said award have been paid, and the sixth is in the hands of the said Secretary of State and not yet paid over and applied by him on said award; and whereas the sum of forty-six thousand and twenty-five dollars and seventy-seven cents has been heretofore paid to said Adams upon account of the share of and interest in said award by said instrument assigned by said company to said Adams, a part of which sum was not paid out of the instalments which have been paid on said award as aforesaid, but was paid through the means of, and by the amount of, three certain assignments which said company, for and at the request of said Adams, made out of said award to F. P. Stanton, T. W. Bartley, and W. W. Boyce, and by reason of the matters aforesaid and the conditions contained in said annexed assignment, differences may arise between the parties as to the total amount, and the amount out of each instalment yet unpaid on said award, which the said Adams will hereafter be entitled to receive under and by virtue of said assignment out of said award, and to avoid such differences it has become desirable that those amounts be specified, and the said company and the said Adams have agreed upon and fixed said amounts as the same are hereinafter declared, the agreement of said Adams being evidenced by his acceptance of this instrument:

Now, therefore, know ye, that said La Abra Silver Mining Company, in consideration of the promises aforesaid, and of one dollar to it paid by said Alonzo W. Adams at or before the ensealing and delivery hereof, the

receipt whereof is hereby acknowledged, hath ratified and confirmed, and doth hereby ratify and confirm the above-recited assignment, bearing date the first day of July, eighteen hundred and eighty, which is hereunto annexed, and doth hereby acknowledge, declare, and agree to and with the said Alonzo W. Adams, his heirs, executors, administrators, and assigns, that there now remains unpaid to the said Alonzo W. Adams, by virtue of said assignment, out of the above-mentioned award in favor of said company against Mexico, the total sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents; that said sum is payable in instalments out of the respective instalments on said award whenever and as the same are paid and applied on said award by said Secretary of State as aforesaid and not otherwise, and the amount of each installment so to be paid to the said Alonzo W. Adams, his heirs, executors, administrators, or assigns, is not the amount mentioned in the first condition of said annexed assignment, but has become and is as follows, to-wit: The sum of eleven thousand seven hundred and seventy-five dollars and twelve cents out of the sixth instalment on said award, the same being now in the hands of said Secretary of State as aforesaid, and the sums of eleven thousand seven hundred and seventy-five dollars and twelve cents out of each of the next hereafter succeeding seven annual instalments, viz, the seventh, eighth, ninth, tenth, eleventh, twelfth, and thirteenth, on said award, and the sum of five thousand five hundred and thirty dollars and fifty cents out of the fourteenth annual instalment on said award, which said several sums, making in the aggregate the aforesaid sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents, the said Secretary of State, or other competent authority of the United States, is hereby requested to pay to the said Alonzo W. Adams, his heirs, executors, administrators, or assigns, out of and simultaneously with the payment of the aforesaid respective instalments on said award; that said sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents is not subject to any deduction or diminution for costs, charges, expenses, or any other matter or thing whatever by or on the part or behalf of said company now existing, but if the amount of said award should be reduced by any cause or in any way other than by payment thereon, then the aforesaid sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents shall be reduced proportionately and the aforesaid amounts of the respective instalments on said sum shall abate and be paid accordingly and not otherwise; as, for example, if the amount of said award should be reduced one per cent, then the said sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents shall be reduced one per cent, and the aforesaid amounts of the respective instalments on said sum shall abate and be paid accordingly, and shall not abate one-third of the total amount of said reduction, as stated in said annexed assignment, subsequent assignments and the agreement now made with said Adams having rendered the abatement of one-third incorrect; and that the amount at the date hereof so remaining unpaid to said Adams, by virtue of said annexed assignment, out of said award as aforesaid, and payable to him, his heirs, executors, administrators, or assigns in instalments as aforesaid, out of the annual instalments as the same are paid on said award as aforesaid, is the full sum of ninety-nine thousand seven hundred and thirty-one dollars and forty-six cents, notwithstanding and without regard to the basis

of calculation mentioned in the second condition and on the second page of said annexed assignment, "to determine the amount to be assigned" to said Adams.

In witness whereof said La Abra Silver Mining Company has caused its corporate seal to be hereto affixed, and these presents to be attested by its president and secretary this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and eighty-two.

A. H. GIBBES, *Presdt.* [SEAL.]
SUMNER STOW ELY, *Secretary.*

Sealed and delivered in presence of—
EUGENE FRAYER.
E. L. PALMER.

STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-fourth day of March, A. D. 1882, before me, a notary public, personally came Alfred H. Gibbes, the president, and Sumner Stow Ely, the seretary of La Abra Silver Mining Company, to me known, who being by me duly sworn did severally depose and say, that said Alfred H. Gibbes resided in Newark, in the State of New Jersey, and was the president of said company; that said Sumner Stow Ely resided in said city of New York, and was the secretary of said company; that he knew the common seal of said company; that the seal affixed to the foregoing instrument was said common seal and was affixed thereto by order of the board of trustees of said company, and that, by like direction, he signed his name to said instrument as said officer.

[SEAL.] EUGENE FRAYER,
Notary Public (34) *N. Y. City and Co.*

Received, New York, February 1st, 1884, of La Abra Silver Mining Company by another assignment to me this day made by said company, twelve hundred dollars on the interest in the award mentioned in and assigned to me by the foregoing assignment, the said twelve hundred dollars to be applied and deducted as follows, to wit: Out of each installment upon my said interest payable to me by said assignment, beginning with the sixth installment, which has not yet been paid, but the money for which is in the hands of the Secretary of State (as is also that for the seventh and eighth), there shall be deducted and retained by or for said company, one-ninth part of said twelve hundred dollars, or a proportionately greater part of said twelve hundred dollars if, for any reason, the number of installments to be paid on my said interest, beginning with said sixth installment, shall be less than nine; the amount of the principal of the foregoing assignments remaining after deducting therefrom the said twelve hundred dollars, being ninety-eight thousand five hundred and thirty-one dollars and forty-six cents ($98,531.46), still due and unpaid me on said assignment.

A. W. ADAMS.

Received, New York, February 1, 1884, of La Abra Silver Mining Company, on the interest in the award mentioned in the foregoing assignment, the further sum of seventeen hundred dollars ($1,700), the same to be applied and deducted in installments in the same proportions and manner as the above-mentioned twelve hundred dollars are to be applied and

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deducted; and the amount of principal of said assignment remaining, after deducting therefrom the said seventeen hundred dollars, being ninety-six thousand eight hundred and thirty-one dollars and forty-six cents ($96,831.46), still due, and to become due and yet unpaid me upon the said foregoing assignment.

A. W. ADAMS.

SHELLABARGER & WILSON,
ATTORNEYS AT LAW, WASHINGTON, D. C.
Washington City, D. C., April 1, 1887.

Hon. THOMAS F. BAYARD,
Secretary of State of the U. S.

DEAR SIR: We herewith transmit to you, for the purpose of being filed and recognized by your Department according to its terms, an assignment to us of an interest in the awards, against Mexico, in favor of La Abra Silver Mining Company, of which the following is a copy:

"Know all men by these presents that we, *La Abra Silver Mining Company*, a corporation created under the laws of the State of New York and having our office in the city of New York, for and in consideration of one dollar and of other good and valuable considerations to us in hand paid by *Shellabarger & Wilson* (a firm composed of Samuel Shellabarger and Jeremiah M. Wilson), attorneys and counsellors at law, of Washington, D. C., the receipt of which is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over to the said Shellabarger & Wilson, their heirs and assigns, an interest to the extent and amount of *three thousand three hundred and thirty-three dollars and thirty-four cents* in the award for $683,041.32 Mexican gold dollars made in our favor against Mexico by Sir Edward Thornton, the umpire under the convention between the United States and Mexico of July 4, 1868, and the conventions supplementary thereto, in the case numbered 489 on the docket of the commission established under the conventions; the *said hereby assigned interest to be taken and paid out* of the moneys heretofore paid by Mexico to the United States or Secretary of State of the United States, under said conventions, which are payable to us, said company, on said award, but which have heretofore been withheld and retained by, and are in the hands of, said United States or of said Secretary of State and now remain unapplied to the payment of said award, and whenever the said moneys shall be applied by said United States or said Secretary to the payment of said award, but not before; *and* in the event of such application of said moneys not being made this instrument not to be construed as creating any liability or obligation on the part of us, said company, in favor of said Shellabarger & Wilson, their heirs or assigns.

"*In witness whereof* we have caused our corporate seal to be hereto affixed, and these presents to be signed by our president and secretary this fifth day of March, A. D. 1887, at the city of New York.

"(Signed) A. H. GIBBES, *as President.* [SEAL.]
"SUMNER STOW ELY, *as Secretary.*

"Sealed and delivered in presence of—
J. G. BALDWIN.

"STATE OF NEW YORK,
"*City and County of New York, ss:*

"On this fifth day of March, 1887, before me, the undersigned notary public, personally came A. H. Gibbes, the president, and Sumner Stow Ely, the secretary of La Abra Silver Mining Company, a corporation, both to me known, who being by me severally duly sworn did each for himself depose and say, that the said Gibbes was the president of said company and resided in the city of Newark, New Jersey; that the said Ely was the secretary of said company and resided in said city of New York; that he knew the common seal of said company, and the one affixed to the within and foregoing instrument was said common seal; that it was affixed to said instrument by direction of the board of trustees of said company, and that he signed his name to said instrument as such officer as aforesaid by the like direction.

"(Signed) J. G. BALDWIN. [SEAL.]
"*Notary Public in and for New York County.*"

You will please place the same on file to be recognized by you in the future disposition of the said fund according to the terms of the said power of attorney and assignment.

We also desire to call your attention to the fact that on the 23d day of September, 1886, we transmitted to you an assignment by Gen. A. W. Adams to us of five thousand dollars to be paid out of said La Abra moneys, and which assignment by Gen. Adams remains on file in your Department. The assignment and power of attorney herewith transmitted to you is a recognition by said company of our right to the said five thousand dollars agreed to be paid by Gen. Adams and is the company's method of paying its two-thirds of said five thousand dollars.

We, upon and after the payment of the said $3,333.34, will be entitled to be paid out of Gen. Adams' share of the said award, under his said assignment of $5,000 only the remaining one-third of such $5,000, to wit, $1,666.66, which amount you will please retain for our use, and not pay over to any party other than ourselves without our further order. We now expect, from information received from the company, and also from the executor of Gen. Adams, that the assignment to him of his interest in said award by said company will be placed on file before any further distributions of said moneys shall be made; but whether this filing should occur or not we request that said $1,666.66 be retained to be paid to us, in addition to that covered by the power of attorney here enclosed, and to the other power of attorney to us from said company now on file in the Department dated on the —— day of ——— A. D. 188 .

Yours truly,

SHELLABARGER & WILSON.

Know all men by these presents that we, *La Abra Silver Mining Company*, a corporation created under the laws of the State of New York and having our office in the city of New York, for and in consideration of one dollar and of other good and valuable considerations to us in hand paid by *Shellabarger and Wilson* (a firm composed of Samuel Shellabarger and Jeremiah M. Wilson), attorneys and counselors at law, of Washing-

ton, D. C., the receipt of which is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over to the said Shellabarger and Wilson, their heirs and assigns, an interest to the extent and amount of *three thousand three hundred and thirty-three dollars and thirty-four cents* in the award for $683,041.32 Mexican gold dollars, made in our favor against Mexico by Sir Edward Thornton, the umpire under the convention between the United States and Mexico, of July 4, 1868, and the conventions supplementary thereto, in the case numbered 489 on the docket of the commission established under said conventions; *the said hereby assigned interest to be taken and paid* out of the moneys heretofore paid by Mexico to the United States, or Secretary of State of the United States, under said conventions, which are payable to us, said company, on said award, but which have hitherto been withheld and retained by, and are in the hands of, said United States or of said Secretary of State and now remain unapplied to the payment of said award, and whenever the said moneys shall be applied by said United States or said Secretary to the payment of said award, but not before; *and* in the event of such application of said moneys not being made, this instrument not to be construed as creating any liability or obligation on the part of us, said company, in favor of said Shellabarger and Wilson, their heirs or assigns.

In witness whereof we have caused our corporate seal to be hereto affixed, and these presents to be signed by our president and secretary, this fifth day of March, A. D 1887, at the city of New York.

A. H. GIBBES, *as President.* [SEAL.]
SUMNER STOW ELY, *as Secretary.*

Sealed and delivered in presence of—
J. G. BALDWIN.

STATE OF NEW YORK,
City and County of New York, ss:

On this fifth day of March, A. D. 1887, before me, the undersigned notary public, personally came A. H. Gibbes, the president, and Sumner Stow Ely, the secretary of La Abra Silver Mining Company, a corporation, both to me known, who being by me severally duly sworn, did, each for himself, depose and say, that the said Gibbes was the president of said company and resided in the city of Newark, New Jersey; that the said Ely was the secretary of said company, and resided in said city of New York; that he knew the common seal of said company, and the one affixed to the within and foregoing instrument was said common seal; that it was affixed to said instrument by direction of the board of trustees of said company, and that he signed his name to said instrument as such officer as aforesaid by the like direction.

[SEAL.]
J. G. BALDWIN,
Not'y Public in and for New York County.

(Endorsed on back:) La Abra Silver Mining Co. to Shellabarger and Wilson. Assignment of $3,333.34 out of award. Dated March 5th, 1887.

WASHINGTON, D. C., *December* 2, 1879.

Hon. WILLIAM M. EVARTS,
Secretary of State:

DEAR SIR: Referring to the two requests for payment of moneys applicable to the award made in favor of La Abra Silver Mining Company, and the papers accompanying one of said requests, filed by me in the Department of State to-day, I now beg to add, by way of explanation:

1. That you retained ten thousand dollars of said moneys against a note, and mortgage given to secure it, made by A. W. Adams and filed by Henry C. Hepburn as the assignee thereof; and against a notice that an assignment of an interest in said award to the extent of forty-four hundred dollars had been made by A. W. Adams, and was held by Charles T. Parry and Joseph Hopkinson, as assignees of William M. Baird;

2. That the said papers, filed by me to-day, dispose of said note and mortgage, and ought to set free all of said moneys retained by reason of them; and

3. That an interest in an award ought to be entitled to no more than its proportionate part of the moneys to which the award itself is entitled; that one thousand and fifteen dollars and thirty-nine cents (being the amount of three thirteenth parts of forty-four hundred dollars) exceed the proportionate part of an interest of forty-four hundred dollars in said award in all the moneys received by you applicable to said award; and that, without raising any questions as to the assignments or their right to take hold of the moneys payable to said company on said award, the sum of one thousand and fifteen dollars and thirty-nine cents is all that ought to be retained for said Parry and Hopkinson, assignees, out of said moneys.

Very respectfully, your obt. servant,

SUMNER STOW ELY.

Hon. WILLIAM M. EVARTS,
Secretary of State:

I respectfully request the payment to me of the sum of two thousand nine hundred and nine dollars and ninety-four cents ($\$2{,}909\frac{94}{100}$) out of the moneys applicable to the award made in favor of La Abra Silver Mining Company against Mexico under the treaty between the United States and Mexico of July 4, 1868, retained, and remaining in your hands, by reason of a promissory note made by A. W. Adams to W. Wadsworth, and mortgage made by said Adams to said Wadsworth to secure said note, both dated on or about Dec. 13th, 1871, and filed in the Department of State by Henry C. Hepburn as assignee thereof, as a claim against said moneys, and the delivery to me of said note and mortgage; and I present herewith the written consent of said company that said sum be paid to said Hepburn, and the written order and request of said Hepburn that the same be paid, and the said note and mortgage be surrendered to me.

SUMNER STOW ELY.

Dated Washington, Dec. 2d, 1879.

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Hon. WILLIAM M. EVARTS,
Secretary of State.

SIR: La Abra Silver Mining Company hereby consents that out of the moneys in your hands applicable to the award made in favor of said company against Mexico, under the treaty between the United States and Mexico of July 4th, 1868, the sum of two thousand nine hundred and nine and $\frac{94}{100}$ dollars ($2,909.94) be paid to Henry C. Hepburn by reason of the promissory note made by A. W. Adams to W. Wadsworth for two thousand dollars and interest, and the mortgage made by said Adams to said Wadsworth to secure said note, both dated on or about Dec. 13, 1871, and filed by said Hepburn, as the assignee thereof in the Department of State as a claim against said moneys.

J. G. BALDWIN, *President.*
SUMNER STOW ELY, *Secretary.*

Dated New York, Nov. 29, 1879.

(Endorsement on back:) La Abra Silver Mining Company and Henry C. Hepburn consent.

Hon. WILLIAM M. EVARTS,
Secretary of State.

SIR: Please pay to Sumner Stow Ely, by check to his order, all moneys which La Abra Silver Mining Company consents be paid to me, out of the moneys now in your hands applicable to the award made in favor of said company against Mexico under the treaty between the United States of Mexico of July 4th, 1868, by reason of the promissory note made by A. W. Adams to W. Wadsworth, and mortgage made by said Adams to said Wadsworth to secure said note, and the interest, which said note and mortgage are respectively dated on or about Dec. 13, 1871, and were filed by me, as the assignee thereof, in the Department of State as a claim against said moneys; and upon said payment being made to said Ely, please deliver to him said note and mortgage, and I withdraw the same from the files of said Department. The receipt of said Ely shall be a full discharge for said moneys, note, and mortgage.

H. C. HEPBURN.

Dated at New York, Nov. 29, 1879.

(Endorsement on back:) La Abra Silver Mining Company and Henry C. Hepburn, order.

Whereas under the treaty between the United States and Mexico of July 4, 1868, an award was made in favor of La Abra Silver Mining Company against Mexico for $683,041.32 by Sir Edward Thornton, the umpire appointed under said treaty, and there is in the hands of the Secretary of State of the United States, payable to said company on said award, its proportionate shares of the three annual installments paid by Mexico to the United States under said treaty in the years 1882, 1883, and 1884, which

shares have been retained by said Secretary and withheld from said company, and together amount to $146,600, or thereabouts; and whereas there is pending in the Senate of the United States for ratification a convention between the United States and Mexico relating, among other things, to the opening of said award and a retrial of the case of said company against Mexico; and George Ticknor Curtis, esq., of the city of New York, has rendered professional services for said company in the making of an argument against the ratification of said convention before the Senate Committee on Foreign Relations to which the said convention was referred; and whereas said services were rendered upon the agreement that in addition to the money paid in hand to the said Curtis he should be paid eight hundred and fifty dollars contingent upon the defeat in the Senate of said pending convention out of the first installment of moneys paid by said Secretary to said company on said award after said pending convention had been defeated, and that an assignment be made to him accordingly;

Now we, said La Abra Silver Mining Company, a corporation created under the laws of the State of New York, and having our business office in the city of New York, for and in consideration of said services, and of the premises, do hereby assign, transfer, and set over to the said George Ticknor Curtis eight hundred and fifty dollars of the moneys payable to said company on said award; provided, however, the said pending convention be defeated in said Senate, the same to be taken and paid to said Curtis, his executors, administrators, or assigns, out of the first installment on said award that shall be paid by said Secretary of State after the said pending convention has been defeated.

In witness whereof we have caused our corporate seal to be hereto affixed and these presents to be signed by our president and secretary this 24th day of April, A. D. 1884, at the city of New York.

A. H. GIBBES, *As Presdt.* [SEAL.]
SUMNER STOW ELY, *As Secretary.*

Sealed and delivered in the presence of—
J. G. BALDWIN.

STATE OF NEW YORK,
City and County of New York, ss:

On this 24th day of April, A. D. 1884, before me, a notary public, personally came Alfred H. Gibbes, the president, and Sumner Stow Ely, the secretary, of La Abra Silver Mining Company, both to me well known, who, being by me severally duly sworn, did depose and say, each for himself, that said Gibbes was the president of said company and resided in the city of Newark, New Jersey, and said Ely was the secretary of said company and resided in said city of New York; that he knew the common seal of said company, and the seal affixed to the foregoing instrument was said common seal; that said seal was affixed to said instrument by direction of the board of trustees of said company, and that he signed his name thereto as said officer as aforesaid by the like direction.

[SEAL.] J. G. BALDWIN,
Notary Public in and for New York County.

(Endorsed on back): La Abra Silver M. Co. to Geo. Ticknor Curtis. Assignment of $850. Dated Ap'l 24th, 1884.

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DEPARTMENT OF STATE,
Washington, D. C., June 30, 1884.

Personally appeared George Ticknor Curtis, and signed the foregoing power of attorney in my presence, and acknowledged the same to be his free act before me.

[SEAL.] JOHN J. CHEW,
Notary Public.

IN THE STATE DEPARTMENT,
April 17, 1885.

It is hereby agreed by and between Geo. Ticknor Curtis and Thos. W. Bartley that the foregoing power of attorney be, and the same hereby is, revoked and annulled, and the Department is hereby notified that the said Bartley has no interest in the foregoing assignment, but the same was filed by him simply for the benefit of the said Curtis.

GEO. TICKNOR CURTIS.
T. W. BARTLEY.

Witnesses:
E. HAYWOOD.
JOHN J. CHEW.

Whereas La Abra Silver Mining Company, by an instrument in writing, sealed with their corporate seal and signed by their president, A. W. Gibbes, and their secretary, Sumner Stow Ely, bearing date on the 24th day of April, 1884, assigned to me, George Ticknor Curtis, of the city of New York, the sum of eight hundred and fifty dollars ($850), to be paid out of the first installment of moneys that will be paid by the Secretary of State to the said company on a certain award in the said assignment mentioned, next after the Senate of the United States shall have refused to ratify a certain convention now pending before the Senate, relating, among other things, to the said award made in favor of the said company, which said assignment is herewith filed in the Department of State. Now, therefore, I, George Ticknor Curtis, assignee of the said sum of eight hundred and fifty dollars ($850), do hereby constitute and appoint the Hon. T. W. Bartley, of the city of Washington, in the District of Columbia, to be my true, sufficient, and lawful attorney, to demand and receive, for me and for my use, from the Secretary of State of the United States, a check or warrant for the said sum of eight hundred and fifty dollars ($850), payable to my order, and not otherwise, or such voucher for the payment of the said sum to me as by law and custom the Secretary of State may issue to me, pursuant to the assignment aforesaid; and the receipt of my said attorney for such check, warrant, or other voucher, payable to my order, shall have the same force and effect as if signed by me.

Witness my hand at the city of Washington, this 28th day of June, 1884.

GEO. TICKNOR CURTIS.

Signed in presence of—
JOHN J. CHEW.

Know all men by these presents that we, La Abra Silver Mining Company, a corporation created under the laws of the State of New York and having our office in the city of New York, for and in consideration of one dollar and other valuable considerations to us in hand paid by Cyrus C. Camp, as executor of the last will and testament of Herman Camp, late of Rouseville, Pa., deceased, the receipt of which is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, to the said Cyrus C. Camp, as said executor, his successor, heirs, and assigns, an interest to the extent and amount of ten thousand dollars in the award for $683,041.32 Mexican gold dollars made in our favor against Mexico by Sir Edward Thornton, the umpire, under the convention between the United States and Mexico of July 4, 1868, and the conventions supplementary thereto, in the case numbered 489 on the docket of the commission established under said conventions; provided, nevertheless, and this assignment is made upon these express conditions, to wit:

1st. The said ten thousand dollars shall be taken in and by installments and not otherwise, out of the moneys payable annually by Mexico to the United States under said conventions which are applicable to said award, including therein and beginning with the moneys now in the hands of the Secretary of State for the United States applicable to said award so paid by Mexico in January, 1880; and each said installment upon said ten thousand dollars shall be one-eleventh part of said sum of ten thousand dollars, unless for any reason the number of said annual payments to be made hereafter by Mexico, together with the one made in January last, shall be less than eleven, in which case said annual installments shall be proportionately increased; and

2d. In case the total amount of said award shall be reduced by any proceeding, or in any way except by payments, then the said interest of ten thousand dollars hereby assigned shall be reduced proportionately, and from that time the amount to which said ten thousand dollars shall be so reduced shall be deemed and taken as the amount assigned by this instrument, and thenceforward the annual installments thereon shall be reckoned and taken out accordingly.

In witness whereof we have caused our corporate seal to be hereto affixed and these presents to be signed by our president and secretary this sixth day of May, at the city of New York.

A. H. GIBBES, *as Presdt.* [SEAL.]
SUMNER STOW ELY, *as Secretary.*

Sealed and delivered in presence of—
THOS. T. SHERMAN.

STATE OF NEW YORK,
City and County of New York, ss:

On this second day of July, eighteen hundred and eighty, before me personally appeared Alfred H. Gibbes and Sumner Stow Ely, with both of whom I am personally acquainted, and which said Alfred H. Gibbes is known to me to be the president, and which said Sumner Stow Ely is known to me to be the secretary of the La Abra Silver Mining Company, the corporation described in and which has executed the foregoing instrument,

who, being by me severally duly sworn, did depose and say that the said Alfred H. Gibbes resides in Newark, New Jersey, and the said Sumner Stow Ely resides in the city of New York; that the said Alfred H. Gibbes is the president and the said Sumner Stow Ely is the secretary of the said La Abra Silver Mining Company, the corporation described in and which executed the said instrument, and that each of them knew the corporate seal of said corporation; that the seal affixed to said foregoing instrument is the corporate seal of said corporation, and was thereto affixed by authority of said corporation, and that the said Alfred H. Gibbes subscribed his name thereto as such president, and the said Sumner Stow Ely subscribed his name thereto as such secretary by the like authority.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

[SEAL.]

THOS. T. SHERMAN,
Notary Public, Westchester Co.,
With Cert. in N. Y. Co.

This *instrument*, made this sixth day of May, in the year of our Lord one thousand eight hundred and eighty, between *Alonzo W. Adams*, of the city of New York, of the one part, and *Cyrus C. Camp*, as executor of the last will and testament of Herman Camp, late deceased, of Rouseville, Pennsylvania, of the other part:

Witnesseth that *whereas* the said Alonzo W. Adams made his promissory note dated on or about June 28th, 1871, for five thousand dollars to Herman Camp, then of Rouseville, Pa., and as security for the payment thereof made a mortgage to said Herman Camp, of same date as said note, upon a part of the interests of said Adams in the respective claims of La Abra Silver Mining Company, of John Cole and others, against Mexico, then pending before the United States and Mexican Joint Claims Commission at Washington, D. C., under the convention between the United States and Mexico of July 4th, 1868, and the conventions supplementary thereto, and of the awards which might be made upon said claims; and the said Adams also by an assignment, bearing the same date as said note and mortgage, assigned to Sumner Stow Ely one-fiftieth part of the interest of said Adams in said claims and the awards thereon, which part of said interest was, by an assignment of same date, assigned by said Ely to the said Camp, reference to the said instruments being made for greater particularity; *and whereas* the said Herman Camp has since deceased, and the said Cyrus C. Camp, of Rouseville aforesaid, is the executor of the last will and testament of said deceased, qualified and acting, and the said note, mortgage, and assignment came to his hands as executor as aforesaid, and he has filed the same in the office of the Secretary of State for the United States at Washington aforesaid;

And whereas, by the provisions of said convention the awards made thereunder against Mexico were to be paid by Mexico to the United States in certain annual installments, in January of each year, and an award was made by the umpire appointed under said convention upon the claims above mentioned in favor of said La Abra Silver Mining Company, and against Mexico, for six hundred and eighty-three thousand and forty-one

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dollars and thirty-two cents ($683,041.32), and in favor of John Cole and against Mexico, for seventy-one thousand one hundred and nine dollars and thirty-eight cents ($71,109.38) (the case of the latter being numbered 948 and of the former 489 on the docket of said commission);

And whereas said La Abra Silver Mining Company has, by an instrument dated May 6th, 1880, assigned to said Cyrus C. Camp as said executor an interest in the said award in their favor against Mexico to the amount of ten thousand dollars, to be taken in eleven annual installments out of the money payable by Mexico annually to the United States applicable to said award, including and beginning with the money now in the hands of the Secretary of State for the United States applicable to said awards paid by Mexico in January, 1880, as by reference to that instrument will more fully appear.

Now, in consideration of the premises and of one dollar to the said Cyrus C. Camp in hand paid by the said Adams, the receipt of which is hereby acknowledged, the said Cyrus C. Camp, as said executor, for himself, his heirs, executors, and administrators, hereby covenants and agrees to and with the said Alonzo W. Adams, his heirs, executors, and administrators, and assigns as follows, to wit:

First. That the amount to be taken out of the moneys now in and which may hereafter come to the hands of the Secretary of State from Mexico under said conventions, and to be paid to said Cyrus C. Camp as said executor, under and by virtue of said mortgage and assignment to Herman Camp (exclusive of the moneys to be paid to the said Cyrus C. Camp under the aforesaid assignment to him by La Abra Silver Mining Company), is the sum of two hundred and fifty dollars *each year*; and the same shall be taken out of money paid upon the award of John Cole until the sum of ten thousand dollars has been received by said Cyrus C. Camp, as hereinafter mentioned.

Second. That when the annual payments to the said Cyrus C. Camp, his successors or assigns, of the two hundred and fifty dollars above mentioned, out of the said John Cole award, as above provided, together with the annual payments to be made to him under and by virtue of the aforesaid assignment to him by the La Abra Silver Mining Company out of the award in favor of that company, shall amount to ten thousand dollars, then all payments to said Cyrus C. Camp shall cease, and the ten thousand dollars so paid shall be in full satisfaction of said note, mortgage, and assignment to Herman Camp, and in full of all demands of every kind; and the said Cyrus C. Camp, as said executor, will satisfy and discharge the same and execute and deliver to said Adams such instrument as may be reasonably devised by him for that purpose, or the note, mortgage, and assignment aforesaid.

Third. That when the sum of ten thousand dollars has been paid to said Cyrus C. Camp as aforesaid the residue of the ten thousand dollars so assigned to him by said La Abra Silver Mining Company as aforesaid then remaining unpaid shall belong to and be the property of the said Adams; and the said Cyrus C. Camp hereby assigns and transfers to him, his heirs and assigns, said residue, and shall and will execute and deliver to him or them such further or other instruments to make the assignment of said residue more effectual as he or they may reasonably require as soon as the said sum of ten thousand dollars, without interest, shall have been received by said Cyrus C. Camp as aforesaid.

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Fourth. It is not the intent of this instrument to discharge the said Adams from personal liability for any part of said ten thousand dollars; but such part as shall remain unpaid in the manner aforesaid, if any such part there be, may be recovered by action against him, his heirs, executors, or administrators.

And in consideration of the aforementioned agreements on the part of the said Cyrus C. Camp as said executor, and of one dollar to said Adams in hand paid by said Cyrus C. Camp, receipt whereof is hereby acknowledged, the said A. W. Adams, for himself, his heirs, executors, and administrators, hereby covenants and agrees to and with the said Camp, as said executor, his successors, heirs, and assigns, that of the moneys now in and which shall hereafter come to the hands of the said Secretary of State applicable to the said award of and in favor of the said John Cole there shall be taken under and by virtue of the aforesaid mortgage and assignment to Herman Camp and paid over by said Secretary of State to the said Cyrus C. Camp the said sum of two hundred and fifty dollars each year until the said Camp has received from that source and the installments out of the award made in favor of said La Abra Silver Mining Company the said sum of ten thousand dollars, without interest.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

A. W. ADAMS, [SEAL.]
C. C. CAMP, [SEAL.]
As Executor, &c., of H. Camp, dec'd.

Sealed and delivered in presence of—
S. S. ELY.

STATE OF NEW YORK,
City and County of New York, ss:

On this eighth day of May, in the year one thousand eight hundred and eighty, before me came A. W. Adams and C. C. Camp, to me known to be the individuals described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same.

[SEAL.] WALTER H. OGDEN,
Notary Public (11), *City and County of New York.*

HOUSE OF REPRESENTATIVES,
Washington, D. C.

Hon. T. F. BAYARD,
Sec'y of State.

SIR: I have the honor to enclose herewith, for record, assignment of C. C. Camp, executor of Sterling B. Toney, at whose request I send it. Please acknowledge receipt, obliging,

Your obt. serv't, WM. C. OATES.

This instrument, made this 21st day of February, A. D. 1888, between Cyrus C. Camp, of Bradford, Pennsylvania, as executor of the last will and testament of Herman Camp, formerly of Rouseville, Pennsylvania, and Sterling B. Toney, of Louisville, Kentucky.

Witnesseth: That whereas an award was rendered in favor of La Abra Silver Mining Company, a corporation organized under the laws of the State of New York, against the Republic of Mexico, by the umpire of the American and Mexican Joint Claims Commission, appointed and established under the convention between the United States and Mexico, dated July 4th, 1868, and the conventions supplementary thereto, for the sum of six hundred eighty-three thousand and forty-one dollars and thirty-two cents ($683,041.32), in the case numbered four hundred and eighty-nine (489) on the docket of the said Commission established under the said convention;

And whereas by an instrument in writing dated May 6th, 1880, the said La Abra Company assigned to Cyrus C. Camp, as executor of the last will and testament of Herman Camp, an interest in the said award to the amount of ten thousand dollars ($10,000), payable in yearly installments of nine hundred and nine and 09/100 dollars ($909.09) each, which said instrument of assignment was duly executed and delivered to said Camp, as executor, and was duly filed in the Department of State at Washington:

Now, therefore, in consideration of the sum of one dollar, to me paid by Sterling B. Toney, of Louisville, Kentucky, and of divers other good and valuable considerations, the receipt of which is acknowledged by me, I, Cyrus C. Camp, as executor of the last will and testament of Herman Camp, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said Sterling B. Toney, his heirs, executors, administrators, and assigns, out of the said ten thousand dollars ($10,000) assigned to me by said La Abra Company, as hereinbefore recited, the sum of three thousand dollars ($3,000): Provided, nevertheless, that this assignment is made upon these express conditions, to wit: Whereas the said ten thousand dollars ($10,000) was assigned May 6th, 1880, by said La Abra Company, payable in eleven yearly installments of nine hundred and nine and 09/100 dollars ($9 9.09) payable each year out of moneys paid out to be paid by the Republic of Mexico to the United States under said convention which are applicable to the said award;

And whereas the payment of the said moneys to the said La Abra Company and to its assignees under said award was suspended in the year 1881 by the United States, the last payment thereunder being made on the first day of February, 1881;

And whereas of the amount of ten thousand dollars ($10,000) so assigned by said La Abra Company to said Camp two installments of nine hundred and nine and 09/100 dollars ($909.09) each have been paid, and by the said agreement of the remainder thereof the said Camp, executor, is to receive three thousand and fifty-five dollars ($3,055) and the said Toney is to receive three thousand dollars ($3,000) and Daniel M. Adams, executor, is to receive two thousand one hundred and twenty-seven dollars ($2,127):

Now, therefore, it is agreed that whenever the said remaining portions of the said sum of ten thousand dollars ($10,000), assigned by La Abra Company, May 6th, 1880, to said Camp, shall be paid by the United States the said Sterling B. Toney shall be entitled to receive out of any said payment that proportionate part of the payment which the said sum of three thousand dollars ($3,000) bears to the whole amount out of the said ten thousand dollars ($10,000) now remaining unpaid.

Provided, further, that in case the said total amount of said award shall be reduced in any proceedings or in any way except by payment, then the said interest of the said three thousand dollars ($3,000) shall be reduced proportionately and from that time the amount to which the said sum of three thousand dollars ($3,000) shall be reduced shall be deemed and taken to be the amount assigned by this instrument.

In witness whereof I have hereunto set my hand and seal at Bradford, in the State of Pennsylvania, this 21st day of February, 1888.

CYRUS C. CAMP,

As Executor of the last will and testament of H. Camp, deceased.

Sealed and delivered in presence of—
JAMES GEORGE.

THE STTAE OF PENNSYLVANIA,
The County of McKean, ss:

Before me personally appeared Cyrus C. Camp, to me well known to be the person described in and also executed the foregoing instrument, and acknowledged that he did execute the same as executor of the last will of Herman Camp, of Rouseville, Pennsylvania.

Witness my hand and official seal at Bradford, this 21st day of February, 1888.

[SEAL.]

GEORGE J. WOLF,
Notary Public.

KENNEDY & SHELLABARGER,
ATTORNEYS AND COUNSELLORS AT LAW,
KELLOGG BUILDING,
Washington, D. C., ———, 188 .

Memorandum of agreement made this twentieth day of May, 1886, between Alonzo W. Adams and Crammond Kennedy, witnesseth, that the said Kennedy hereby agrees to use his best endeavors in all proper professional ways to maintain the validity of La Abra award, to defeat all measures in opposition thereto, and to promote the distribution of the funds now on hand to the credit of the said award in the Department of State, and for such services rendered and to be rendered the said Adams, for himself and as agent of La Abra Company, hereby agrees to pay to the said Kennedy, out of the payments which may hereafter be made on account of the said award, *pro rata* as the same shall be disbursed by the Government of the United States, the sum of fifteen hundred dollars and the further sum of one thousand dollars—this further sum and the payment thereof to be subject to the approval of Mr. S. S. Ely, secretary of La Abra Company. The said company to pay two-thirds and the said Adams one-third of the said fee.

A. W. ADAMS.

Know all men by these presents, that we, La Abra Silver Mining Company, a corporation created under the laws of the State of New York, and having our office in the city of New York in said State, have made,

constituted, and appointed, and by these presents do make, constitute, and appoint Sumner Stow Ely, of said city, lawyer, our true and lawful attorney for us and in our name, place, and stead to ask, obtain, and receive from the United States, or Secretary of State, or other officer of the United States, having the possession, control, or disbursement of the moneys hereinafter mentioned, the distributive shares of the moneys heretofore paid by Mexico to the United States under the treaty between the United States and Mexico of July 4th, 1868, and the treaties supplementary thereto, and of all other moneys, if any there be, belonging or payable to us, said La Abra Silver Mining Company, upon the award made under said treaty, by Sir Edward Thornton, the umpire, on or about December 27th, 1875, in case No. 489 on the docket of the Commission under said treaty, in favor of us, said company, against Mexico for principal sums and interest, amounting to $683,041.32 Mexican gold dollars; and thereupon, for us, said company, and in our name, place, and stead to execute, acknowledge, and deliver all necessary receipts, acquittances, and discharges for the same, and generally to do and perform all and every act and acts requisite and necessary to be done for the obtaining of said shares of said moneys; and hereby giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof we, said La Abra Silver Mining Company, have caused our corporate seal to be hereto affixed and these presents to be signed by our president and secretary, the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

JAMES G. BALDWIN, *As President.* [SEAL.]
SUMNER STOW ELY, *As Secretary.*

Sealed and delivered in presence of—
JAS. W. HALE.

STATE OF NEW YORK,
City and County of New York, ss:

Be it known that on this 14th day of August, A. D. 1879, before me, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came and appeared James G. Baldwin, the president of La Abra Silver Mining Company, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York, in the State of New York, and was president of said company; that he knew the corporate seal of said company; that the seal affixed to the within and foregoing power of attorney was said corporate seal; that it was so affixed by the order of the board of trustees of said company, and that he signed his name to said power of attorney as said officer, as aforesaid, by the like order.

In witness whereof I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

[SEAL.]

JAS. W. HALE,
Public Notary, 69 Wall St.

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STATE OF NEW YORK,
City and County of New York, ss:

I, Hubert O. Thompson, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Jas. W. Hale, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. *I further certify that said instrument is executed* and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 14th day of August, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

DISTRICT OF COLUMBIA,
City of Washington, ss:

Be it known that on this 15th day of August, 1879, before me, the undersigned, a notary public in and for said District, dwelling in said city, duly commissioned and sworn, personally came and appeared Sumner Stow Ely, secretary of La Abra Silver Mining Company, to me known, who, being by me duly sworn, did depose and say that he resided in the city of New York, in the State of New York, and was the secretary of said company; that he knew the corporate seal of said company; that the seal affixed to the within power of attorney was said corporate seal; that it was so affixed by the order of the trustees of said company, and that he signed his name to said power of attorney as said officer as aforesaid by the like order.

In witness whereof I have hereto subscribed my name and affixed my seal of office the day and year last above written.

[SEAL.] GEORGE F. GRAHAM,
Notary Public.

Stipulation as to evidence of title to mines.

It is hereby stipulated and agreed that inasmuch as no question is raised as to the title of the defendant, La Abra Company, to the mines which it claimed to own in Mexico, and an abstract of said title is printed in Exhibit A to the bill of complaint herein, the original evidence of title in the archives of the United States and Mexican Claims Commission need not be embraced in the record.

ROBERT B. LINES,
Spl. Asst. to Atty. Gen.

SHELLABARGER & WILSON,
Solrs. for Defendant.

Stipulation as to letter of Th. J. Bartholow.

It is hereby stipulated that the letters and papers, copies of which appear in the press copy book introduced in evidence herein by complainant as Exhibit 11 to the deposition of Wm. P. Tuttle, and purport to have been signed by Th. J. Bartholow, as said letters and papers are printed between pages 506 and 260 of Exhibit B to complainant's bill, were in fact signed by said Th. J. Bartholow, superintendent of La Abra Silver Mining Co., and that when translations of said letters and papers appear as aforesaid, the same are true and correct translations.

SHELLABARGER & WILSON.
ROBERT B. LINES,
Spl. Asst. to Atty. Gen.

Stipulation as to letter to Mexican minister.

It is hereby stipulated that the minister of Mexico at Washington has received from the minister of foreign affairs in the City of Mexico an official communication of which the following is a translation, viz:

"MINISTRY OF FOREIGN AFFAIRS,
"*Mexico, January* 2, 1895.

"Referring to your note, No. 591, of Dec. 24, relative to the transmission of the original list of the books and documents of La Abra Mining Company sent to Mexico in May, 1878, by Señor Licinciado Ladislao Gaona, I have to say that careful search has been made for said list in the archives of this office, and that it has been impossible to find it, doubtless because the said document was sent by Mr. Gaona in a private note to the late Mr. Ygnacio L. Vallarta, who was at that time minister of foreign relations of the Republic. This office addressed itself to Mr. Alexander Vallarta, executor of the will of his father Ygnacio, asking for the list in question, and the said executor replied that after careful search for it among the papers of the estate, he was unable to find it.

"I renew to you my attentive consideration.

(Signed) "MARISCAL.

"To the MINISTER OF MEXICO,
"*Washington.*"

And that the foregoing translation may be offered in evidence by the complainant, subject to all proper objection.

SHELLABARGER & WILSON.
ROBERT B. LINES,
Spl. Asst. to Atty. Gen.

Stipulation as to exhibits to deposition of A. K. Coney.

It is hereby stipulated that counsel for complainant and counsel for defendant in the above-entitled cause may select from the books and

papers introduced in evidence herein as exhibits to the deposition of Alex. K. Coney such extracts as they may respectively desire to offer in evidence, and that only such extracts shall be considered as having been introduced, and that they shall be subject to all objections as to admissibility which might properly be raised against the admission of the said books and papers.

SHELLABARGER & WILSON.
ROBERT B. LINES,
Spl. Asst. to Atty. Gen.

Stipulation as to Exhibits A and B to bill of complainant.

It is hereby stipulated that Exhibit A, appended to the bill of complainant in the above-entitled cause, as printed, contains a true copy of the evidence (other than evidence of title to the La Abra Co.'s mines) exhibited to the United States and Mexican Mixed Commission in support of and in defense against the claim of La Abra Silver Mining Co. against Mexico, or of correct translations of such portions of said evidence as were exhibited in Spanish, excepting the letters wholly printed on page 360 of said exhibit, as to which it is stipulated that the Spanish originals shall be produced for the inspection of the court; that Exhibit B, appended to said bill, as printed, from the words "Hacienda La Abra Silver Mining Co.," on page marked 506, to the words "Santiago Granger," on page marked 318, contains a true transcript, with correct translations of the press copies of letters and papers found in the press copy book introduced in evidence by the complainant herein as Exhibit 11 to the deposition of Wm. P. Tuttle, taken June 8th, 1894; that said Exhibit B, as printed, from the words "Office of Garth, Fisher & Hardy, bankers," on page 318, to the words "I inclose letter from your friend," on page 322, contains true copies of eight letters introduced in evidence by the complainant herein as Exhibits 12 to 19 to the deposition of Julius A. de Lagnel, taken June 9, 1894; that said Exhibit B, as printed, from the words "Mazatlan, March 15th, 1868," on page 322, to the words "directions as given in former letter," on page 326, contains true copies of five letters, introduced in evidence by the complainant herein as Exhibits 6, 7, 8, 9, and 10 to the said deposition of Wm. P. Tuttle; that said Exhibit B, on page 317, contains a true copy of a letter introduced in evidence by the complainant herein as Exhibit 5 to the said deposition of Wm. P. Tuttle, and that the said Exhibit A, and the said portions of Exhibit B referred to in this stipulation, may be used and referred to in the trial of this cause, with the exception above noted, in lieu of the originals, which originals need not be printed as evidence.

SHELLABARGER & WILSON.
ROBERT B. LINES,
Spl. Asst. to Atty. Gen.

COURT OF CLAIMS.

EQUITY, NO. 17917.

THE UNITED STATES v. LA ABRA SILVER MINING COMPANY ET AL.

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Depositions of witnesses produced, sworn, and examined at the hour of 2 o'clock p. m., Thursday, April 25, 1895, and other times, at the city of Washington, D. C., before me, the undersigned, a United States commissioner in and for the District of Columbia, in a certain cause now pending in the Court of Claims, wherein the United States are the complainants and the La Abra Silver Mining Company et al. are defendants, when were present Hon. William A. Maury, special assistant to the Attorney-General, on behalf of the complainants, and Crammond Kennedy, esq., counsel on behalf of the defendants.

SUMNER STOWE ELY, having been produced as a witness on behalf of the defendants, and being first duly sworn, before any question was put to him, to tell the truth, the whole truth, and nothing but the truth, relative to the matters at issue herein, testified as follows:

That his name is Sumner Stowe Ely; that he is 69 years of age; that his residence is now Girard, Pa.; that up to about 1890 it was in the city of New York for a great many years; that he is by profession a lawyer, and when he left the city of New York he retired from practice; that he has no interest, direct or indirect, in the subject-matter of this controversy, except as attorney for the company; that he is not related to either the defendant or the complainant in this cause.

Direct examination by Mr. KENNEDY:

Question. How are you connected now, and how have you been connected, with the defendant La Abra Company?

Answer. I am still its general attorney and counsel in the city of New York, and I am trustee and secretary and treasurer of the corporation.

Question. My question was a little broader than your answer. How have you been connected heretofore, as well as your present connection?

Answer. My previous connection was that I was attorney and counsel for the company in the city of New York. I was consulted by the company at its organization, and at various times since that in its business affairs.

Question. Can you give the date, approximately, when you or your firm became attorneys for the company?

Answer. In 1865. It was in the spring of 1865 we were consulted by the gentlemen who subsequently formed the company. At the formation of the company I drew the certificate in the summer or fall of the same year.

Question. Were you practicing law at that time by yourself or with a partner?

Answer. Mr. Britton was my partner. The firm was Britton & Ely.

Question. How long had you been in the practice of law?

Answer. I went to the city of New York in 1855; I was practicing three or four years before that. I practiced law ever since until I retired.

Question. Who was Mr. Britton?

Answer. He had been district attorney for Kings County, in which county is the city of Brooklyn, elected for two terms. I went into partnership with him when I went to the city of New York, and remained with him until his death, which was about 1885; I can not remember the exact date now.

Question. I ask your attention to a notice from the complainant, to produce certain books and papers, which is printed on the first and second pages of the complainant's evidence.

Answer. I see it.

Question. And I ask you what books, if any, kept by the defendant company, its officers or agents, from the year 1865 to 1868, are in your possession?

Answer. The stock certificate book of the company is in my possession; that is all.

Question. Will you produce that book in response to this notice?

Answer. Yes; I here produce it.

(Said book was thereupon produced and placed in the hands of attorney for complainants.)

Question. What other books of the defendant company, if any, have been in your possession belonging to the period named in the notice?

Answer. No others.

Question. Have you any knowledge of any other books covered by the notice?

Answer. I have no knowledge. I understood there were some books and I made a search for those books, but could never find them; they were lost; I have no personal knowledge of any other books.

Question. So that you can not state from your own knowledge what books of the company belonging to the period named in the notice were kept in New York?

Answer. No; I can not. All I know of that is what I gleaned through Mr. Garth's testimony before the subcommittee. He testified something about the character of the books they had.

Question. What connection, if any, did you or your firm have with the presentation of the claim of the defendant company to the United States and Mexican commission under the treaty of July 4, 1868?

Answer. We had simply this connection: That if the company and its agents should take testimony, whenever they desired any counsel in that respect we gave it, and thus might be said to be connected with the presentation of the case. We had nothing to do with the taking of the testimony—that part of it—except that I took the testimony of Mr. Collins at his request. If we were asked any questions with regard to witnesses or formalities of notices, or anything of that kind, we gave our opinion about it—gave our advice—and to that extent we might be said, perhaps, to be connected with the presentation of the case, but that only.

Question. What attorneys, if any, did the company have in Washington?

Answer. They had Frederick P. Stanton, William W. Boyce, Robert Rose. They had as counsel also Jeremiah Black. He was here a good deal. Of course, he did not live here. Your question was as to attorneys in Washington.

Question. And those attorneys and that counsel represented the company in the prosecution of this claim before the commission?

Answer. Yes, sir; they had the charge and control of it here; signed the papers here.

Question. Did you have any occasion while the claim was pending or in course of preparation to write to the agent of the Mexican Government before that commission? And if so, please state what the occasion was.

Answer. Yes; I had such an occasion. It was when the first deposition had been prepared by the agent of the company, and the question submitted to us was whether notice was necessary to be given to the Mexican attorney of the taking of that or other depositions. I examined the treaty and the rules of the commission, and they seemed to be entirely silent on the subject; but I advised that the safer and the fairer course, at least, would be to offer to give notice of the fact that one deposition had been prepared, and to offer to give notices of the others if the Mexican attorney desired it. Upon that advice I formulated a letter and sent it to Caleb Cushing.

Question. Did you keep a copy of that letter that you sent to Mr. Cushing?

Answer. I did; yes, sir [handing counsel copy of letter referred to].

Question. Of course, you do not know what became of the original?

Answer. No; I never saw that after it left my office.

Question. Can you testify that the copy which you have produced is a correct copy of the letter that you sent to Mr. Cushing?

Answer. Yes, sir; it is a correct copy.

Mr. KENNEDY. I now offer the copy of the letter in evidence.

(Said letter is hereto attached and marked Exhibit S. S. E., No. 1.)

Question. Did you receive any reply to that letter to Mr. Cushing?

Answer. I did.

Question. Will you look at the letter which I now hand to you and say whether you recognize it? And if so, describe the letter.

Answer (after examining same). This is the reply received from Mr. Cushing. It is dated "Washington, D. C., December 2, 1869," signed "C. Cushing," and addressed to "Messrs. Britton & Ely."

Mr. KENNEDY. I offer that letter in evidence.

(Said letter is hereto attached and marked Exhibit S. S. E., No. 2.)

The WITNESS. I wish to explain one phrase in my letter. We say in that letter, "We have taken one deposition and are preparing to take others in other States." I mean by "we," that the company was preparing to take, and that I used "we" as a lawyer. I did not mean that we personally went into it. Just as I said before, we had strictly nothing to do with that; the attorneys down here controlled that, and the agent of the company.

Question. You have spoken of the agent of the company two or three times; who was he?

Answer. Alonzo W. Adams.

Question. I ask your attention to pages 345 and 346 of Exhibit B attached to the bill of the complainant, and in connection with that document, which please describe in a brief way, I want to ask you what you had to do with the preparation of it.

Answer. The document on page 345, I had nothing to do with the preparation of that. The document on page 346 is the annual report made in 1877. That was drawn up by me, and I am one of the signers to it. The document on page 345 is the last report made by the company at the time it ceased its operations from business.

Question. In the report which is dated January 20, 1868, "Amount of capital stock actually paid in" is stated as $157,000, and in the report on page 346, dated January 20, 1877, "Amount of said capital actually paid in" is stated at $235,000. Will you please explain the difference?

Answer. The $157,000 is the amount of gold; the amount stated in gold. The $235,000 is the amount that the gold cost in currency, stated in currency. In other words, one was the statement of the amount in currency and the other in gold.

Mr. MAURY. I do not know about the competency of that evidence. These written papers ought to speak for themselves.

Mr. KENNEDY. If you have any objection of course the testimony will be taken subject to that; but there has been a question in the discussion of this case, raised by the complainant, whether there is not a

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discrepancy between the two reports, and we suppose that we not only have a right, but are bound, so far as we can, to explain that alleged discrepancy.

Question. How did you arrive at the amount of $255,000 in the report of 1877?

Answer. We arrived at that from the deposition of Mr. George Collins, the president, which was taken in the case, and from his statements to me I drew that deposition. It was drawn by me at the time from his statement that that was the amount the gold had cost in currency.

Question. At the time that the original subscriptions were made?

Answer. Yes. In other words, as I understood him, they kept a currency and a gold account.

Question. In the report of 1868 the amount of existing debts of the company is stated as not exceeding $72,000, and in the report of 1877 it is stated that the existing debts of the said company amount to $154,431.06. Now, please explain the difference.

Answer. We obtained the amounts of the indebtedness also from the deposition of Mr. Collins. In that deposition he specified what the amount of the existing debt of the company was, and gave me the data from which that deposition was drawn. This report adds interest upon that amount at 7 per cent from the date of Mr. Collins's deposition to the date of the report. It is the same indebtedness testified to by Mr. Collins in his depositions, with the accumulation of interest at 7 per cent; that is all.

Question. And that deposition of Mr. Collins is part of Exhibit A attached to the Government's bill, is it not?

Answer. Yes.

Question. Have you ever testified before this in regard to the La Abra award; and if so, when and where?

Answer. I was examined by the subcommittee of the Senate, of which Mr. Morgan was chairman. I think it was February, 1889—somewhere about that time. I think my deposition was the last one taken before that committee; my evidence, rather, was the last one taken before that committee.

Question. On page 958 of Senate Report No. 2705, Fiftieth Congress, second session, you were asked this question by Mr. Foster, counsel for the Mexican Government: "Were you consulted by the company when Exall returned from the mines in 1868?" And you answered: "Well, I was spoken to by Mr. Collins. Whether you would call it consultation with the company or not I do not know. If you would like me to tell you what occurred I will do so with pleasure." Now, Mr. Foster did not ask you to tell what occurred in that conversation or consultation with Mr. Collins. Will you now please state what occurred?

Mr. MAURY. I object to that as incompetent, because a mere conversation between the witness and a third party, though an officer of the company, as to matters in respect of which the witness may, if relevant, be examined, if he has an original knowledge of them.

Answer. About May, 1868, I was going down Wall street and I met George C. Collins, who was then president of La Abra Company, and I stopped and chatted with him a moment, and he said to me, "Do you know Exall is back?" I said, "Yes; he called on me a few days ago." He said,

"I suppose he told you what brought him back, and the shape of things down there?" I said, "Yes; in a general way." I did not have time to get many details from him. He said, "Things are in pretty bad shape down there, are they not?" I said, "I should think they were," and he said, "What can the company do about it?" I replied that to seek redress from a foreign government was a long, tedious, and, I had no doubt, an expensive proceeding, and I thought the company would have to charge the whole thing over to profit and loss.

Question. On page 962 of this same document the chairman of the subcommittee, Mr. Morgan, asked you this question: "You have no other knowledge of it" (that was of the abandonment of the company's property at Tayoltita) "except what is disclosed in the evidence in the case and the papers?" And you replied: "And except what Exall told me, if that can be considered knowledge. That was before I became officially connected with the company." Please state what it was that Exall told you in regard to the reasons why he had left Tayoltita?

Mr. MAURY. Question objected to on the ground that it calls for the statements and declarations of a third party, who might have been examined regularly as a witness under the sanction of an oath.

Mr. KENNEDY. I wish to say that the declarations of Exall to Mr. Ely are considered relevant and material only in case the letterpress copy book which the Government has offered in evidence is received in evidence by the court; that the purpose of asking the witness what Exall said when he returned from the mines is to break the force of the unsworn letters, or, rather, the copies of unsworn statements from this same person which the Government has offered in evidence; that Exall was examined under oath on behalf of the company and his depositions are found in Exhibit A attached to the Government's bill.

Answer. In May, 1868, Mr. Exall came to my office in the city of New York. After shaking hands with him I said I was surprised to see him here; that I supposed he was in Mexico making silver bricks for La Abra Company, and he stated that he had been compelled to skip out between two days. I think that is the very expression he used, "skip out between two days." And I remarked I hoped he had not been committing any crime down there and had to leave the country in that way. He said he got alarmed for his personal safety and was fearful of what might happen to him, and he went out in that way as the safest way to go. I asked him what was the danger, what was the trouble. Well, his reply was that the local authorities down there were a very bad lot; that they were arbitrary, and if they got down on a man they would do about what they liked with him, and there was not much, if any, chance for redress.

Mr. MAURY. This all goes in, of course, subject to my objection, as stated yesterday to Mr. Kennedy.

Mr. KENNEDY. We will consider that objection as in.

WITNESS. That they had annoyed him and harassed him in his business in various ways; that they at one time made an attack, or instigated an attack, on his hacienda, and shortly before he came away they had arrested him without any cause at all and imprisoned him, and shut him up in a dirty, nasty place and kept him there, and through the intercession of a friend and the payment of $50 he got out. That just before he came

away he had an intimation from a source he considered reliable, that for his own personal safety he had better get away as soon as he could. Now, on the strength of those things he went off as he did. I then asked him what had become of the books and papers and loose property of the company; what he had done with them. He said he had left them all behind, and he said he did not think the company would amount to anything down there until they changed the public sentiment. At the time he came in I was preparing a paper for a client who was expected in for it, and just at that point of my conversation with Mr. Exall the gentleman came in, and I had not finished the paper because I had stopped to talk with Exall. So I excused myself to Exall, or, rather, asked him to excuse me; that the gentleman was waiting for his paper, and asked him to come in again sometime. So that was the reason of the abrupt close of the conversation. I will say that in the conversation with Mr. Collins and Mr. Exall I do not pretend to give the exact language, except Mr. Exall saying he had skipped out between two days. But I am satisfied that I have given the substance of the conversations. It has been a long time ago.

Question. When you speak of the conversations with Mr. Collins and Mr. Exall, you mean the separate conversations which you have just been detailing?

Answer. Yes. The impression might be gathered that I have given the exact words. That is not so. I have given the substance of it in very nearly the language.

Question. Do you remember whether you had any conversation with Exall in New York after the controversy had been started in Congress regarding La Abra award. And if so, please state when you had any such interview with Exall and what was the purpose of your part of that interview.

Mr. MAURY. This question is objected to because it relates to mere hearsay.

Answer. The most extended conversation I ever had with him was in relation to these letters which appear in this letter book, and the letters passing between him and Granger subsequent to his return. That was just after the Slaughter petition had been presented here, in which were set forth copies of extracts from the lettters claimed to be written in that letter book.

Question. That is, letters that were claimed to have been written by Exall?

Answer. Exall to Garth in New York. I would say that was April, 1878.

Question. You spoke of the Slaughter petition. What use had been made of that document?

Answer. No public use in the sense that it had been presented either to the House or Senate; but it had been circulated among Members of the House, and one of them had fallen into the hands of Bartholow, who was a stockholder in La Abra Company and had been superintendent of that company.

Question. Now, please state what conversation you had with Exall about those letters of his.

Mr. MAURY. Objected to on the same ground as the last preceding question.

Answer. I went to New York from here and called upon Exall, stating to him what these letters purported to show, and asked him if they were genuine, and if they were, I wished to know if he had any explanation for them. He made to me a verbal explanation of the reasons why those letters or similar letters had been written, and I asked him to put it in writing so that it could be verified and used down here before Congress if it became necessary. He thereupon did make out a statement of it, and I drew an affidavit at the bottom of it. We went together before a notary public; Exall signed it there, and swore to it and gave it to me.

Question. What did you do with that original sworn statement?

Answer. It was filed before the Senate Committee on Foreign Relations in August, 1882; I think the date is August 5, or about that date, 1882.

Question. Did you ever see it again?

Answer. No, sir; I never did.

Question. What steps, if any, did you ever take to recover possession of it?

Answer. I endeavored to find it. I asked Mr. Babcock, who was clerk of that committee, if he had it in his possession. He said he had not, but that I would find it probably with the executive clerk or the files clerk of the Senate. I went upstairs, saw the executive clerk, and he said it would not be in his files anyway, and he would not look, and said the place for it would be the files clerk. I went then to the files clerk, and he said he would overhaul his papers, among which it would be if it was with him. He did so, and at his request I looked over his shoulder to make sure about it. He could not find it. He said it was not with him. I then went to the State Department and inquired of the chief clerk, or at least a gentleman whom I supposed to be the chief clerk, with regard to it, to see if it would be in his office. He said no; it would never be returned there. I did not know anywhere else to look, and that ended my search for it.

Question. Did you make a copy of that sworn statement of Exall's at the time you received it?

Answer. No; I did a short time before it was filed with the Senate Committee on Foreign Relations; two or three days before it was filed I made a copy of the original.

Question. Will you please look at the paper which I show you now and say whether you recognize it; if so, describe it.

Answer (after examining paper). This is the copy made by me of the original. The written statement is signed "Charles H. Exall," dated "New York, April 23, 1878," and the affidavit at the bottom signed by him was dated May 1, 1878, and is signed by James D. McClelland, who was the notary public before whom the affidavit was taken.

Mr. KENNEDY. I here offer that paper in evidence.

(The same is hereto attached, marked Exhibit S. S. E., No. 3.)

Mr. MAURY. This document is objected to upon the grounds of objection stated to the last preceding question.

Mr. KENNEDY. Defendant's counsel observes that the copy of Exall's ante-mortem affidavit will be admissible, in his opinion, only in case the letterpress copy book is received in evidence, and then by way of explanation of the letters of Exall, copies of which are contained in that book.

Question. Is that the same copy that was submitted to the Senate committee?

Answer. It is a copy of the original submitted to the Senate committee; the original was submitted to the Senate committee. You mean the Morgan committee. I thought you meant the Committee on Foreign Relations. That is the same copy that was submitted to the investigation committee, of which Senator Morgan was the chairman, in 1889.

Question. That is the subcommittee?

Answer. The subcommittee. When you propounded the question I thought you spoke of the Foreign Relations Committee.

Question. You mentioned the attorneys that the company had in Washington, and Mr. Stanton as one of them. What Mr. Stanton was he? I mean the company's attorneys before the joint commission.

Answer. It was Frederick P. Stanton, formerly a Member of Congress from Kentucky, and who was chairman of the Judiciary Committee while in Congress, and was afterwards governor of Kansas under Buchanan's Administration.

Question. You have mentioned Jeremiah S. Black as counsel of the company. Is that the same Mr. Jeremiah S. Black who was Attorney-General of the United States and Secretary of State?

Answer. The same man; yes, sir. He argued the case before the umpire, and prior to that he prepared the instructions to General Adams when he made his second trip to Mexico as to additional evidence which should be taken; gave him written detailed instructions.

Question. I want to read to you the fifteenth paragraph of the bill of complaint in this case, and to ask you what you have to say in regard to it, so far as it concerns you as one of the attorneys of the company: "Your orator further says that in fact the said defendant, La Abra Silver Mining Company, was not compelled by threats or acts of Mexican officials or people to abandon its said mines, as stated in said memorial and in the proofs submitted by said defendant company in support of its said claim on or about the 20th day of March, 1868, or at any other time, but that said claim was a sheer fabrication and every material allegation in said memorial contained was a falsehood, and that all the material testimony upon which said claim was allowed and said award was made was false, and known to be so by all the witnesses giving and swearing to the same, and by the said defendant company when it caused the same to be exhibited as true to said commissioners, and that the whole of the said award was obtained by fraud effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns." What have you to say to that, so far as you and your firm were concerned?

Answer. It is an outrageous and infamous lie, so far as we are concerned. That is the only way I can characterize it. I was never more surprised in my life than when the attack was made on this case, and as soon as this letter book appeared I took every possible means to find out if the facts about it were true.

Cross-examination by Mr. MAURY:

Question. Do I understand you to say that, as counsel for La Abra Company and also as secretary and treasurer of that company, you had

no idea what had become of the books and correspondence and other papers belonging to the principal office of that company in New York?

Answer. During the period of time specified in the notice from 1865 to 1868. The books kept, the originals, I know nothing about, except this stock certificate book; that I stand ready to produce. That is the only book I got. I have no knowledge of them at all. I never saw them and do not know what became of them.

Question. Did I not understand you to say you supposed they were lost?

Answer. On the supposition that they had some books which could not be found, I assume they are lost. I can not see any other construction I can put on it. I went myself and made a search to ascertain what had become of the old books, but could not find them.

Question. As secretary and treasurer of the company?

Answer. I did not become secretary and treasurer until the year 1876 or 1877. Prior to that time I had nothing to do with the company officially. I was its attorney and counselor, and had nothing to do with the books of the company, and had no knowledge of the prior books. I was not connected with the company until after this award was made. I had been its attorney and counselor, but had nothing to do with these books, and knew nothing about them.

Question. Did not the main business of the company when you became its officer relate to the past events prior to 1868, when the company was in operation?

Answer. It had nothing to do that I know of, after it ceased its business, except to distribute this award.

Question. But in preparing the case for the commission, was it not necessary for the officers of the company and the counsel of the company to inquire for and search for the books containing the transactions of the company prior to 1868?

Answer. That is a question that would have to be determined by the counsel here who controlled the matter. I had nothing to do with the matter. The books, as I understand it, were in Mexico.

Question. Then you say the books were in Mexico?

Answer. The books that would show the transactions of the company in Mexico, of course, would be there where the business was carried on. They would have some general books, I presume, in New York.

Question. In the home office, in the principal office, would there not be records of all the transactions at the mines?

Answer. I should think not. It would not unless, of course, reports were made from the mines and they were abstracted and put in books. I do not know what the course would be about that.

Question. Then you state, as counsel who was engaged in preparing this case for the commission, that you have no knowledge of any effort being made by others, and that no effort was made by yourself, to get access to the records and papers of the home office, of the principal office, at New York, prior to 1868?

Answer. None was made by my firm; that is certain. We had nothing to do with that part of the case. I am not aware that the counsel down here ever made any; I am not aware that they ever did, but whether they did or not I do not know. As I say, we had nothing to do with

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that part of the case. We were general counsel for the company and if anything arose there which we were asked our advice about, we would give it. That is the only way we had connection with the preparation of the case. That is the reason the question was asked us as counsel about notice being given to the other side as to taking depositions. I then looked at the rules and they seemed to be silent about it, but I concluded to give it. As to the details of the business, they had control of it here; they had their regular attorneys here.

Question. That is not responsive to my question.

Answer. My response is that, so far as I was concerned, I never made any inquiry until after the award and this letter book appeared. Then I went to search for the books and correspondence of the company in order to test the truth of this letter book to see whether it was true or not, if the letters were genuine, and I wanted to know all about it. Whether these counsel down here made any effort to get the books, I do not know.

Question. You had no original knowledge of the data upon which the memorial was prepared that was laid before the commission?

Answer. I had no knowledge except what was communicated to me, of course, by some officer of the company. I had no personal knowledge.

Question. So far as your personal knowledge was concerned, you did not know whether those facts or representations were true or false?

Answer. What representations?

Question. As to the claim of La Abra Company.

Answer. No; I had not what could be deemed original knowledge; I only had such general knowledge as might arise from association with the parties in a general way. In other words, I was not a participant in that part of it.

Question. How did it happen that the affidavit was prepared and sworn to by Mr. Exall without having seen the letters it refers to?

Answer. Do you mean the original letters themselves or the letter book? All I knew about it was what was contained in what is known as the Slaughter petition, which professed to set out a portion of those letters, and one of these pamphlets fell into the hands of Mr. Bartholow, who showed it to me. I could not take it to New York with me, because he had to return it to the gentleman who gave it to him, so that I had to tell him what the contents were.

Question. Did you try to get a copy of that pamphlet to take to New York with you?

Answer. No further than it was shown to me, and I did not know where to go to get a copy of it.

Question. Did you ask Mr. Bartholow to lend it to you?

Answer. I wanted to take it to New York, but he said he had to return it.

Question. Did you not consider it important that Mr. Exall should see those letters in some shape or form before making that affidavit?

Answer. I think it would have been better if he had been more fully aware exactly of what was set forth. If I had had it, I would have shown it to him.

Question. Do you not think it was your duty as counsel to make a strenuous effort to get a copy of these letters?

Answer. I did not look at it so. I went upon such information as I had and could get, and went back to inquire about it. I knew possibly I might find the originals in New York. That is the first thing I did—to go and see if I could find the originals from Exall to Garth—the first effort I made when I went to New York, before I went to see Exall.

Question. And this was in 1878?

Answer. Yes, sir; in 1878.

Question. Long after the claim had been presented to the commission?

Answer. Yes, sir.

Question. And is it possible that you did not know at that time that the original documents and papers relating to the claim were not producible or were lost?

Answer. I did not know anything about that part of it. I did not know what original papers there were, anyhow; but inasmuch as this letter book claimed to set out letters from Garth to Exall and from Exall to Garth, I went to see if I could find such originals.

Question. Did you before the Senate committee state as a reason for not showing these letters in some shape or form to Exall that you could not procure a copy readily?

Answer. I do not think I said anything about that. If I did I do not recollect it. Of course, the testimony will show. I do not think I expressed it that way. I have no recollection of it.

Question. Were you not questioned upon the representations you made to Exall——

Answer. Yes, sir; I was not questioned as to whether I could get a copy of this sort of book to take along with me. I do not think I was. If I was the evidence will show it.

Question. And do you remember what you said in reply to the question as to the representations which you made to Exall as to the contents of these papers?

Answer. I was asked to state as well as I could what I said to Mr. Exall that these letters contained. I have a general recollection of that; yes, sir.

Question. In your examination before the Senate committee, you state, page 939, that your attention was first called to these letters by a copy of Slaughter's pamphlet being placed in your hands here in Washington.

Answer. Yes, sir.

Question. In April, 1878?

Answer. Yes, sir.

Question. When you were here upon the affairs of the company?

Answer. Yes, sir.

Question. And then you stated that you did not believe in their genuineness or their existence, and you went immediately over to New York for the purpose of ascertaining what you could about them?

Answer. Yes, sir.

Question. To find all the correspondence of the company and to see Exall himself in regard to it? He was then living there, you say?

Answer. Yes, sir.

Question. Now, you make no reference there at all to any difficulty in the way of your procuring and taking to New York with you a copy of Slaughter's pamphlet.

Answer. The question was not asked me whether I made any efforts at all to take it to anyone. That is the fact, that the only one I ever saw was that one that Mr. Bartholow obtained from a friend who was on the other side, as you might term it, and he had to return it.

Question. Was not this pamphlet of General Slaughter's brought here for the purpose of being presented to Congress as a memorial?

Answer. One would think so, because it was a petition addressed to the Senate and House. But what its real purpose was I do not know. As I understand it, it never was presented, but was simply circulated privately in the House with a view, which we on our side subsequently believed, to influence the vote of Members on the pending bill.

Question. As it must have been circulated in considerable numbers, do you think it would have been very difficult to obtain one copy, or to borrow one to take and show to Exall?

Answer. I did not know who had one. I could not go around at random to the Members, perfect strangers, and ask them if they had a copy to let me have one. I was a comparative stranger to every one in Congress. I did not know where to go.

Question. Did you not appreciate the great importance of having Exall's attention brought in the most particular way to all these letters, that he might give La Abra Company the benefit of any explanation that he might have to make, and so protect his credit as one of their principal witnesses?

Answer. I believed I could tell him substantially enough about those letters so that he would know whether he ever wrote them or not, and if he did, whether there was any explanation that he could give.

Question. Did you have any hand in preparing this affidavit of Mr. Exall?

Answer. I drew the affidavit at the bottom of this statement—no other hand.

Question. Did you have any hand in the statement itself?

Answer. No, sir. I made two suggestions to him in regard to it. He had prepared a statement and addressed it to me as attorney of the company. I suggested that it better be addressed to the company direct, and I suggested also, he having thrown his facts together in paragraphs which did not seem to me to be consecutive, that he rearrange some of his paragraphs—transpose from one point to another and make his narrative more consecutive, as a lawyer would draw it. That is all I had to do with it. I had nothing to do with the contents in any way. I was there to know what he had to say about it, for my own satisfaction, as well as for the benefit of the company, if there was any benefit. The fact of it is that there was no man more surprised than I was when I saw the Slaughter petition, on the assumption that there was such a letter book and that such letters had been written. As I stated there, I did not believe in their existence. I did not believe it could be true about anything they contained. I tried to do the best I could to find out about it.

Question. In your examination before the Senate committee, when asked by Senator Morgan, the chairman, if you had copies of the letters

which Exall was said to have written to the company from Mexico, your answer was, "I had made memoranda from the little pamphlet that I had put into my hands here, but which I left behind me here."

Answer. Yes.

Question. You did not state that there was any difficulty about your taking it to New York with you?

Answer. No, sir; I did not say anything about that. I was not asked the question why I did not take it. I jotted down just such memoranda as I thought I desired.

Question. Considering the great importance of the matter, and considering that you are a lawyer of large experience, is it not somewhat singular that it did not occur to you, without being asked, to account for your failure to take with you to New York those letters when they were so conveniently put together in Slaughter's pamphlet?

Answer. My experience as a lawyer was that it would not be pertinent and proper to answer a question that was not put to me.

Question. Yes; but then when the matter concerns your fidelity to your client in putting his matter and his case in the best possible shape——

Answer. That would be a matter between me and my client, and they did not find any fault with me about it. I think it would have been a matter for Mexico to call out. I certainly stated enough to Exall to show him what letters were referred to.

Question. But are you not mistaken in supposing that Exall did know what letters you were referring to, when you consider the first paragraph of his affidavit, where he states: "My attention has been called by the attorney of your company to a statement that it is claimed by an agent of Mexico that certain letters written by and to me have been obtained by him, which contain statements at variance with the depositions made by me in the matter of the claim of your company against Mexico, in which an award was made in your favor by Sir Edward Thornton, the umpire. I have not assented to the appropriation of my letters by any one, and if any of them have been in the possession of such agent, they have been improperly obtained. I have not seen those alleged letters, and can not say whether they are genuine, garbled, or wholly manufactured for some purpose."

Mr. KENNEDY. The question is objected to, because it calls for a matter of opinion from the witness, and is also argumentative and belongs to the discussion of the case from the evidence.

Answer. The production of the Slaughter pamphlet would not have enabled him to answer that any more. He could not from that say whether they were garbled or forged or not. The only thing that could satisfy him as to that would be the production of the original letter book that your client had, not I. He did not know whether it was a true copy or not, or whether any of it was true. We had no need of it.

Question. Then how did you come to say just now that Exall was enabled to know sufficiently well what letters you referred to by your statements?

Answer. I do not see that that conflicts at all with that statement. That statement is, whether they are garbled or forged in any respect. It is not as to their contents. He does not say anything about the contents

that I have stated to him there. That related to their genuineness; whether that pamphlet or book contained all the writing, or whether some of it was left out, or whether any of it was fictitious, went to its genuineness, and that could only be determined by the production of the original letter book to him. That I could not do; it was in the possession of your client. My recollection is, that further on he does say he wrote letters of similar character to those. At all events, the written statement will determine; that is, as to whether he sufficiently understood the contents of those letters or not. His explanation will show whether he understood the contents of those letters.

Redirect examination by Mr. KENNEDY:

Question. Mr. Maury asked you, substantially, whether you had any knowledge yourself of the foundation on which the claim of the company stood, or of any of the elements that entered into it. I think you said that you had no personal knowledge of any of the material facts of the claim. Now, I want to ask you whether you did not have personal knowledge, for example, of the organization of the company?

Answer. Oh, yes. If that was Mr. Maury's question I did not apprehend its full force. There were certain facts which would enter into this claim, of course, that I would know. I knew there was a corporation. I drew the certificate of incorporation. Another fact was that they purchased the property down there. I drew the title deed in which the consideration was expressed. Another fact was, the amount of money they had raised from the stock. I know the stock book showed that they had issued 1,570 shares of stock, and I knew by our laws that could not be issued for less than par and for cash. Consequently they must have raised $157,000 in cash. If that is what Mr. Maury meant, I did not apprehend his question. Things of that kind I knew necessarily from my connection with the company, but I did not know anything about whether the mines were abandoned or not, except as I learned that from the information of the party who was there.

Question. Did you not also know that Mr. Garth went himself to Mexico to examine the mines prior to their purchase?

Answer. I know that Mr. Garth and one of the other members, who subsequently became members of the company, called on me before they went to Mexico and told me that some mines had been brought to their attention and they were going there to examine them and if satisfactory they intended to buy them, and they wanted to know from me whether they could organize a corporation in the State of New York to work the mines down there. I informed them they could. I know then they went, and when they came back they reported the purchase, and they brought deeds with them from the man of whom they had bought. They gave those deeds to me and I drew deeds from them to the company.

Question. What personal acquaintance, if any, did you have with the president of the company, and what did you know about him (Mr. Collins)?

Answer. He was president at that time. I did his business. He was one of the largest wholesale tea merchants in the city of New York—his house was, and he was the head of it. He imported his teas direct from Japan and China. He was a very prominent business man in the mercantile world. He was a director of the Chatham Bank. He was a

vestryman in St. Thomas's Episcopal Church. That was the leading Episcopal church at that time in New York in point of wealth.

Question. What, if you know, was his standing in the business community?

Answer. His word was better than most people's bond. He was considered a very upright, honorable gentleman, with immense credit and fine business capacity.

Question. As to his means?

Answer. He was reputed to be worth a million dollars, a very wealthy man.

Question. Did you know any of the other officers or stockholders of the company; and if so, state in a few words what their standing was.

Answer. I knew Mr. David J. Garth. I did his business also. He was the head of the house of Garth, Fisher & Hardy, who were bankers and brokers there, doing a very large business. I knew John H. Garth, his brother, who was not at that time, but who has since become president of the Merchants' Bank in Hannibal, Mo., to which point he went from New York. I knew also personally John D. Perry, who is president of the Laclede Bank, St. Louis, Mo. I knew also J. Wilcox Brown, who was the head of the house of Brown, Lancaster & Co., of Baltimore, and of Lancaster, Brown & Co. in the city of New York, and of another house in the South, I think it was in Savannah, although I am not certain of that; it was a banking house. I knew also William L. Hearn; I did his business also. He was in the tobacco business but went to Wheeling and became the head of a large iron house, the largest in that part of the world. These men I have mentioned I knew personally, having done all their private business in the city of New York, except Perry's and Wilcox Brown's. I knew them personally, too, but did not do their business. They were not residents at that time of the city. My relations may be said to have been intimate in a business point of view.

Question. Was there any need of these men cheating anybody to get money?

Answer. Oh, no. They were all reputed to be wealthy men. There were none of them reputed to be worth less than $100,000, and one or two up to a million.

Question. On what basis was the company organized—as to legitimate investment or speculation?

Answer. This company was organized purely as an investment, not for the purpose of speculation. I know that from this fact: When they came to me to draw the certificate of incorporation I asked them the question whether the company was to be a company for speculation or for investment, because whichever way it was it would make a difference in the mode of organization. That is to say, if they wanted to use it for speculative purposes the way would be to make a very large amount of capital stock, eight, ten, or fifty times the value of the property they bought down there, transfer that stock to the men from whom they bought the property, with a private understanding that that should be distributed around among the stockholders and some portion put into the treasury; then start their mines up, get a good showing there, put their stock on the market and get rid of it. That was the speculative way. If, on the

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other hand, they wanted to organize it purely for investment of their capital, the way to do was to make their capital stock just large enough to pay for their property and to give them the means to pay for their improvements, which they expected to make to put it in operation; then they retain the stock among themselves and their friends. They replied it was to be an investment company entirely, not a speculative company, and it was therefore organized with a capital of $300,000, which was supposed to be sufficient to meet all their contingencies, make the improvements down there, and pay for the property.

Question. So far as you know, was a single share of the stock ever offered on the street?

Answer. So far as I know, it never was.

The examination by counsel being concluded, the witness, in answer to the final interrogatory by the commissioner, says:

There is one thing which I think material. Mr. Maury asked me about the books of the company. I think the books showing the expenditures of the company and the details of its proceedings would necessarily be kept where those proceedings were had, which would be at the mines at Tayoltita, and, as a matter of fact, books were kept there and were taken possession of by Mexico, and have been in her possession during all this contest until they were forced out in this court's proceedings, and now for the first time the company has been able to see its own books in this contest. I say "its own books;" I mean part of its own books, for some of the books which were evidently kept down there are not in the files of this case. Those details would not necessarily be kept in New York, which was merely a sort of treasury for the company. They were kept down there.

By Mr. KENNEDY:

Question. What personal knowledge have you of the fact which you have just stated, that the books of the company kept at Tayoltita have recently been produced by the complainants in this case?

Answer. Because they are on file as exhibits in testimony recently taken. They are on file in the office of the clerk of the court, and I have examined those books within the past week. From that examination I am satisfied that some books which were kept there are not here now among them.

By Mr. MAURY:

Question. State what books they are that you are satisfied are not among the exhibits you refer to?

Answer. I think the cash book, which must have been kept by Charles H. Exall, the superintendent of the company, is not to be found there, and ore books are missing. There are ore books there from two or three of the mines, but none from the others upon which a large amount of money was expended, and from which by evidence in the case it appears ores were produced. I will tell you why a cash book was kept by him. A set of books would consist of a ledger, journal, day book, and cash book. During Bartholow's superintendency, who was the first superintendent, and De Lagnel, who was the second superintendent, I find all these books there. During Exall's superintendency I can not find any cash book. The journal contains marginal references to pages which refer ordinarily

to the day book or cash book and show the details of the item which goes into the journal. You may take Exall's journal and all the merchandise items and things of that character and turn to the marginal pages which it contains and seek those items in the day book and you will find the items. But you can not find in that day book anything relating to the cash items in the journal at the pages referred to, nor can you find any cash book to which it ordinarily would refer. For instance, Bartholow's book and De Lagnel's book you would refer to in a similar case. Their cash items refer to pages just like Exall's, and you will find those items in the cash books. Their merchandise items refer to pages as Exall's does, and you will find those items in the day book. Take Exall's cash items in turn and you can not find any detail of them at all, but there is the marginal reference which refers to something, and it should be a cash book. That is my inference; that is all, of course. I do not know. That is my inference that Exall's cash book is missing.

Signature waived.

[SEAL.] ROBT. L. MILLER,
United States Commissioner.

EXHIBIT S. S. E., NO. 1.

10 PINE ST., N. Y., *Nov. 30, 1869.*

Hon. CALEB CUSHING,
Washington, D. C.

DEAR SIR: We are the attorneys and counsel of La Abra Silver Mining Company, and have been since its organization, some five years ago, said company being a mining company organized under the laws of the State of New York and carrying on its mining operations in the State of Durango, in Mexico.

The company was compelled by the authorities of Mexico to abandon its mines and works after having expended large sums of money in opening its mines, erecting stamp mill, etc., etc., and the company has determined to present a claim for damages against Mexico before the joint commission appointed under the convention between the United States of America and the United States of Mexico of July 4, 1868; as to which commission and the claims presented before it we are informed you are the counsel of the Government of Mexico.

We are engaged in the preparation of the case for said company, and desire and are about to take testimony in New York and St. Louis and in several places in the States of Sinaloa and Durango, in Mexico.

We do not see in the printed "rules of the American and Mexican joint commission" (of which we have a copy) any provision made for notice to the opposite party of an intention to take testimony and to appear and cross-examine, etc., from which omission we presume that the testimony is to be taken *ex parte*, and we have accordingly taken the testimony of one witness, Charles H. Exall, in this city, who can be cross-examined at your pleasure. Nevertheless, to guard against a misconception of the rules on our part, we give you the above general notice of our intention to take testimony in support of the claim of said com-

pany; and if you deem notices specific as to time, place, etc., necessary or desirable (and as to which we ask of you the favor to inform us) we will give them to you.

We are also at a loss to determine, from the printed rules, whether the testimony must be taken in the form of questions and answers or in the ordinary form of an affidavit, and also whether the phrase "magistrate or other person authorized to take such testimony," in subdivision (b) of paragraph 5 of said rule, means to give the power to take testimony to any person who has authority by law to take affidavits (such, for instance, as a notary public) as well as a magistrate, and we beg leave to ask you in which form said testimony must be taken (or may it be in either?), and whether it may be taken before any other than a judicial, diplomatic, or consular officer?

We have taken this great liberty because we are informed that the rules were drawn up under your supervision.

An early answer will greatly oblige,

Very respectfully, your obedient servants,

BRITTON & ELY.

EXHIBIT S. S. E., No. 2.

WASHINGTON, D. C., *Dec. 2, 1869.*

DEAR SIRS: I have found it necessary, in reference to various matters here, to make official reply to yours of the 30th, declining to make any expression of opinion in construction of the rules of the commission.

I now write unofficially to thank you for your purpose of giving me notice on the taking of depositions, and to say that I have no right to require of you this trouble.

I remain, yours, truly,

C. CUSHING.

Messrs. BRITTON & ELY.

EXHIBIT S. S. E., No. 3.

To La Abra Silver Mining Company:

My attention has been called by the attorney of your company to a statement that it is claimed by an agent of Mexico that certain letters written by and to me have been obtained by him which contain statements at variance with the depositions made by me in the matter of the claim of your company against Mexico, on which an award was made in your favor by Sir Edward Thornton, the umpire. I have not assented to the appropriation of my letters by anyone, and if any of them are in the possession of such agent they have been improperly obtained. I have not seen those alleged letters, and can not say whether they are genuine, garbled, or wholly manufactured for some purpose.

There were a number of letters written by me while in your employment and subsequently, which, without explanation, may in part be considered as differing from my testimony. They were written between the early part of my administration of the affairs of your company in Mexico

and a time some months after I ceased to be in your employ. The explanation of such parts of these letters as, on their face, seem to be inconsistent with my depositions will be found in the following facts:

I was sent from New York by the La Abra Silver Mining Company to Mexico to assist Col. J. A. De Lagnel, who was then superintendent of the works of the company in Tayoltita. When I reached Tayoltita I was accompanied by James Granger, an English subject. He was a fellow-passenger on the steamers from New York to San Francisco. A few days after leaving the port of New York we became acquainted, and finally quite friendly and intimate; so much so that, although his destination was California, much to my surprise when we arrived at San Francisco he concluded to go down to Mexico with me, and did go with me to Tayoltita and remained at the company's hacienda as my guest until I (when I subsequently took charge of affairs and having found out that he was an expert man with books) gave him employment.

We had not been there many weeks before we concluded (for we frequently talked with each other on the subject) that the company as a company would not be tolerated long in Mexico; that it was a mere matter of time when they would be driven out and compelled to abandon and lose all their interests there, as other American enterprises there had been, and which would thus fall into the hands of someone who would get the benefit of all their works and of a large amount of valuable ores which had cost the company large sums of money and much labor, and we conceived the idea of reaping the benefit ourselves.

We saw that if the company was actually expelled, as we were certain it ultimately would be, we might not, and most probably would not, be able to secure the property, as it would probably fall into other hands; but that if the company could be induced voluntarily to abandon the property before matters culminated in an expulsion, or to part with it for a small consideration, we could probably retain the possession and secure the property to ourselves and due protection, Mr. Granger being an English subject.

The company was already somewhat disappointed because more rapid progress had not been made at the works and in reaching money results, and somewhat dissatisfied with being drawn on by the superintendent for more money. We thought that the state of affairs at the works could, from time to time, be so presented to the company as to induce the feeling we desired, and concluded to act accordingly. There was no purpose to wrong the company in any way. All we sought was to be enabled ourselves to get possession of the property, and at the shortest possible time, before the company would be driven out, which we believed was certain to be done, instead of permitting someone else in that event to obtain it.

Colonel De Lagnel, the superintendent, was sick, and had become thoroughly disgusted with life at the mines, and the annoyances and obstructions to which he was subjected in Mexico worried him to such an extent that he felt, as he said, unfitted to properly attend to the business to be done, and he frequently asked me during his administration to take charge of affairs, which I did; and thus I indirectly had charge of the business of the company for some time before his departure, and I pur-

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posely made such reports to him as to the quantity and quality of the ores as would tend to give the color and tone to his letters written during the latter part of his administration to D. J. Garth, the treasurer of the company in New York.

When he left I became acting superintendent, and I retained Granger to assist me, as already stated. I conducted the business of the company the same as if I might be mistaken in my opinion that it would ultimately be driven out of Mexico, and did my utmost to improve and perfect its works, to get out ores, and make its mines valuable. I obeyed the instructions of the company to my predecessor and myself and cut down all expenses, and to do so cut down the working force, but I endeavored to keep up production and the working of the mines by employing men to work by the cargo. I expended every dollar of the company's money in its business, and notwithstanding its dissatisfaction at some drafts of my predecessor, I drew on the company for money for its business. Much of the bullion extracted by me was not minted, but was sent by me, without the knowledge of anyone at the hacienda but myself, some of it to New York and some of it to San Francisco. This secrecy was necessary, because if it was known it would have been liable to seizure as contraband, and to avoid the possibility of a discovery of the facts no entry of it was ever made in the company's books, but the proceeds were put into the company's business, as stated in my deposition.

In my letters to Mr. Garth, treasurer of the company, written from time to time, I purposely dwelt upon and exaggerated my necessities and the exigencies of the situation, and belittled the value of the mines and ores, and gave to the letters a discouraging aspect. I also wrote to him about my arrest and the threats made to me, and the difficulties and obstructions generally which I met with from the Mexican authorities and people.

Mr. Garth wrote such answers to my letters as I assumed they would call forth, and from the answers it seemed evident that the company would not be unwilling to enter into some arrangement to part with their property, and in the latter part of February, 1868, I concluded to go on to New York and see what could be done to that end.

Preparatory to so going, I drew a paper addressed to James Granger which purported to invest him with my authority and to give him power to act for the company. I had no power to confer, being only an acting superintendent, nor authority to confer such power if I had any; but it was necessary for the purposes we had in view, that he be in possession and that he should seem to Mexicans to have the proper authority. Had I gone then, I intended to return. But I reconsidered my decision to go at that time, and concluded I ought to remain longer before going, and await still more alarming indications from the people and authorities, and the paper I have referred to was never delivered to Granger. Whether I destroyed it or left it among the loose and discarded papers at the hacienda of the company, I do not remember. I remained there some time afterward, but I waited to long, and the explosion, which I believed to be several months distant, came unexpectedly, and the expulsion of the company, and my adrupt departure to save myself from personal harm, and the complete abandonment of everything belonging to the company, took place as I have stated in my depositions.

This expulsion satisfied me that the animosity of the authorities and people was not only against the company as an American company, but also against me as the representative of an American company and individually, and that even if I had got or could get possession of the property I would not have been permitted to remain in the enjoyment of it long, and I gave up all idea of returning for that purpose; but I hoped that Granger, instead of some Mexican, would get the possession of the property, and which I thought through his late affiliation with a Mexican family he might be enabled to do, and which he did, as I learned, except that, as I am informed, Judge Soto, the father of his wife or mistress, took possession of and occupied the company's hacienda.

I returned to New York and informed the company of its expulsion and of my forced abandonment of all its property, and gave them a full history of the state of their affairs and of the feeling in Mexico against them. The company seemed to think the case was hopeless.

A party who had heard of the company's mines proposed to get up a new company and buy out the La Abra Company, and believing that something might thus be saved to the company and made for myself, I exerted myself to bring it about, and even offered to accompany the party to Mexico to aid in completing the transaction; and I wrote several letters to Granger, partly upon that subject, suggesting what course he should pursue, and endeavoring to prevent his throwing any obstacles in the way; but the party subsequently learned through some channel of the hostility of Mexicans to American companies, and of the actual expulsion from the country of La Abra Company, and he dropped all negotiations on the subject, and nothing ever after came of it.

I speak of my letters from general recollection of them only, but the foregoing is a correct history of the origin and purpose of all letters I have ever written which contain anything inconsistent with my depositions. They were written for the express purpose of enabling Granger and myself to obtain the possession of the company's works and mines in the contingency which I have mentioned, and were known to and largely prompted by Granger, and in fact partly drafted by him, and in so far as they conflict with my depositions the letters are untrue, and every material statement in my depositions is true.

CHAS. H. EXALL.

NEW YORK, *April 23, 1878.*

STATE OF NEW YORK,
City and County of New York, ss:

Charles H. Exall, being duly sworn, says that all and singular the matters stated and contained in the foregoing letter or statement by him subscribed are true.

CHARLES H. EXALL.

Sworn to before me May 1st, 1878.

JAMES D. MCCLELLAND,
Notary Public, N. Y. Co.

NOVEMBER 26, 1895.

Met pursuant to agreement. Present, same counsel as before.

JAMES G. BALDWIN, a witness produced on behalf of the complainant, having been sworn in like manner, testified as follows:

That his name is James G. Baldwin; that he is 66 years of age; that he resides on Staten Island, New York; that he is at present an employee of the custom-house, New York; that he has no interest, direct or indirect, in this suit; that he is not related to any person interested in this suit, so far as he knows.

By Mr. KENNEDY:

Question. Were you ever examined in a controversy touching the award that was rendered to this company?

Answer. I was examined before a committee of the Senate, I think it was—I do not know the name of the committee now—about six years ago. I can not be positive just as to the date; the record will show.

Question. Please state how you have been connected with the defendant, La Abra Company?

Answer. I was intimately acquainted and connected in a business way with the former president, Mr. George C. Collins. He died on the 25th of February, 1875, and his son and his widow were his executor and executrix. The son was not much of a business man, quite a young man, and was anxious to have somebody take charge of the settling of the estate that would do it in his name, and that he could depend upon. He sent for me, and immediately after Mr. Collins's death I practically took charge of the settling of his estate, acting for Mrs. Collins and for the executor, Mr. Walter K. So that I found by looking at his books that Mr. Collins was interested in a large amount of money that he had advanced to the La Abra Company in payment for stock and loans to the company.

Question. From that point, will you please come directly to the official connection, if any, you formed with the company, when it was and what it was, and for how long it continued?

Answer. Some time in the year 1876 the officers of this company in New York, Mr. A. H. Gibbs and Mr. D. J. Garth, and Mr. Fletcher Westry, who was not an officer but a stockholder—I do not remember any other—at any rate those gentlemen came to me and requested me to take the position of president of the company to represent the interest of the Collins estate. That is to say, they requested me because I was the representative of the estate, and they thought that Mr. Collins's interest was so large that he was entitled to have a representative, or at least his estate was. I consented and was elected president at that time.

Question. How long did you remain in that position?

Answer. I remained for about two years, it may have been three, when my business was such that I found it was taxing my time, and I requested to be relieved, and was relieved by the election of Mr. A. H. Gibbs as president. Mr. Gibbs acted in that capacity for about a year, and was taken sick and went to Europe. He offered his resignation when he went, but the directors requested him to hold on, thinking he would return soon. Mr. Gibbs, as he did not recover, sent his resignation from Europe, about, I should say it may have been from six months to eight-

een months—I can not say how long after he left he sent his resignation—and the company reelected me, and from that time I have been president, and am president to-day.

Question. Can you give us approximately the date of your reelection?

Answer. I should think it was some time in the year 1878; I am pretty sure it was.

Question. Now, will you tell us how you were qualified to become president or trustee in point of interest as a stockholder?

Answer. The estate of George C. Collins assigned to me one share of stock, making me a stockholder, and so making me eligible.

Question. Have you ever had any other interest than that nominal interest?

Answer. No, sir.

Question. And have not now?

Answer. And have not now. I might say that stock I immediately reassigned and left so that it could be recorded. It was never recorded, but the idea was that I took it only nominally and had no property interest in it, and never expected any.

Question. Now, as I understand, Mr. Collins was elected president in 1866, and remained as president until the time of his death in 1876?

Answer. Yes, sir.

Question. How long had you known Mr. Collins at that time?

Answer. At the time of his election?

Question. When you became president?

Answer. I had known him from about September, 1860.

Question. And what had your relations been with him during that time?

Answer. I was introduced to him at that time by Mr. B. B. Sherman, a former partner of his. He was looking for a bookkeeper and I was an applicant for a position of that kind, and he engaged me as bookkeeper in his business.

Question. Mr. Collin?

Answer. Mr. Collins, at that time.

Question. How long did you remain with him in that position?

Answer. I can not be positive, but I can approximate it. It was until the close of the war, from four to five years, I was with him as bookkeeper.

Question. When you left his employment, where did you go?

Answer. I left his employment as bookkeeper, but was still in his employment as well as of the company that was formed for the investigation of mining property in Nevada.

Question. How long did you remain there?

Answer. I was there about three months.

Question. And then how were you employed?

Answer. I was again employed by another company within the next year in the same enterprise as mining expert, examining mining property in Nevada. After that I was engaged in the banking office of Lees & Waller, the agents of the bank in California.

Question. Where was that?

Answer. In New York, Pine street. My engagement there came through the cashier of the Bank of California, the poor fellow who killed

himself—Mr. Ralston. I made his acquaintance when I was out there in the mining business. He was a very good friend of mine, and through him I became connected with Lees & Waller.

Question. During that time did you maintain your friendly relations with Mr. Collins?

Answer. All the time. There was scarcely a week passed that I did not have some intercourse of a friendly nature, and I had some private transactions in which he assisted me, and I was intimately connected with him in business all along during that time. After being connected with Lees & Waller for, I think, about a year and a half—I will not be positive about the time, but about that—I joined some other gentlemen in New York in the formation of a company for manufacturing cotton-seed oil in Memphis. I became secretary and financial agent of that company, and in connection with that business we manufactured oil and cotton-seed cake and shipped it to Europe, and in connection with that I had a good many transactions with Mr. Collins in his advancing on bills of lading for oil and cake in transitu, etc., so that I was connected with him in a business way in that way. I staid with that company for, I think, about two years and a half or two years—two or three years, I do not remember exactly the time—and then that brings me down to about the point when Mr. Collins died, when I assumed the charge of the settling of his estate, as I have stated.

Question. To drop your connection for a moment with Mr. Collins, I would like you to state in a brief way how you yourself were employed from the time that Mr. Collins died?

Answer. In the first instance, I think I did nothing else than attend to his estate for about six months. Then his successors, Sherman, Collins & Co.—young Mr. Collins and Sherman, who was a partner of Collins at his death, and a Mr. George C. Chase—employed me as bookkeeper, and I attended to their bookkeeping in connection with the settling of the estate until, I think it was, in the year 1878. Then Sherman, Collins & Co. went out of business, and I had nothing to do from that time until the first of January, 1879. A few days from the 1st of January, 1879, I received a telegram from Mr. B. B. Sherman, who was then president of the Mechanics' Bank, and whom I have mentioned before as connected with Collins, asking me to come to New York. He knew I was out of business, and knew I wanted something to do. He took me across the street and introduced me to Mr. J. D. Vermilyea, president of the Merchants' Bank. Mr. Vermilyea was just recovering from a long spell of sickness and was unable to attend to anything more than his duties as bank president. He had, in connection with that, charge of a large number of estates, and he wanted somebody to take that part of the business off his hands, and I was employed by him to do it. I remained in his employ in that position for thirteen years, until his death. Now, I want to add, in connection with that, after I had been in his employ for six months in charge of these estates he also made me an employee of the bank, and he had me appointed as notary public of the bank. After about eight years the assistant cashier of the bank became disabled from blindness, and he had me appointed as assistant cashier, and I remained in that position for three and a half years, until his death.

Question. Now, will you tell us in a general way the extent of the trusts that you managed for Mr. Vermilyea?

Answer. They would aggregate from $2,000,000 to $3,000,000. A particular one was over a million.

Question. Now, to come back to Mr. Collins. Will you tell us what kind of a man he was, as to his standing in the community and his integrity of character, from this long and intimate personal acquaintance to which you have testified?

Answer. I have never been acquainted with a man who stood higher. I have known a good many business men, but I never knew one who stood higher in the opinion of everyone. His integrity was considered beyond a question by everyone that I ever heard speak of it, and, of course, I had opportunity to know the opinion of people in reference to it. I know from my own personal transactions with him that his standard of honesty was the very highest in every respect.

Question. Do you know whether he had any church connection or office?

Answer. He was a vestryman in St. Thomas's church in New York. He was a member and treasurer of the building committee that built the new St. Thomas's church. He was practically the man that did the work and paid the money, and had the whole charge of it. He was treasurer and had the whole charge of the building of St. Thomas's church, and I know, from conversation with members of the church, and from what I have seen and heard, that he stood very high in the estimation of the rector, Dr. Morgan, at that time, and of the members of the church, so far as I know, and I knew quite a number of them.

Question. What can you say about Mr. Collins's financial standing?

Answer. I settled his estate and it amounted to over $250,000.

Question. You mean that amount was actually realized?

Answer. That was actually realized—over $250,000.

Question. And, of course, there were claims, including this interest of his in La Abra Company, that did not materialize?

Answer. Certainly, and those are not counted in my estimate.

Question. Were you aware of Mr. Collins's reputation for truth and veracity among his neighbors, and those to whom he was known?

Answer. In a business way, yes.

Question. What was his reputation for truth and veracity.

Answer. It was like this: I have heard people say they would take his word as quick as they would his bond any time. It was above reproach.

Question. What directors other than Mr. Collins were you acquainted with—I mean of the trustees who held office with Mr. Collins?

Answer. I was intimately acquainted with Mr. A. H. Gibbs.

Question. What have you to say of him as a man of means?

Answer. As a man of means I can not say very much for him. At one time the firm that he was connected with was considered quite wealthy. They had a misfortune in business, and I do not think he had very much means.

Question. What about his character for integrity?

Answer. I never heard one word of anything against the integrity of Mr. Gibbs or any other member of the firm.

Question. Did you know any of the other trustees?

Answer. I knew Mr. D. J. Garth quite intimately.

Question. What was his standing as a man and a merchant?

Answer. It was very good. He was a tobacco merchant, and his firm was considered a very reputable firm. I have not, of course, the same means of information or the same means of knowledge—I have only a general means of knowledge—of Mr. Garth, but all I did hear and know of him was in favor of him as a man of strict business integrity.

Question. How as to his means?

Answer. At one time considerable. At the close of his business there in New York I think he had not the reputation of having very much money.

Question. Did you know Mr. Worthington?

Answer. I never saw him.

Question. Have you told us about all the trustees with whom you were well acquainted who held office with Mr. Collins?

Answer. You want only those who held office at that time with him—not those that came in afterwards?

Question. Not those that came in afterwards.

Answer. I think I have. I do not think of any other now.

Question. Now, do you recollect whether the award in favor of the company had been rendered when you became president?

Answer. It had not. That is my memory. I may be wrong about it.

Question. Assuming that the award was rendered in December, 1875?

Answer. Then it was before, because I was certainly not president until this stock [referring to the stock certificate book] was issued to me. July 19, 1876, was the date of this certificate, and the election was either that day or a day or two afterwards—just about that time.

Question. Do you recollect whether a motion was made for a rehearing before the umpire after the award was rendered?

Answer. I remember distinctly there was such a motion.

Question. What makes you remember that so distinctly?

Answer. Because it was brought to my knowledge by the attorney of the company and because, of course, it blocked our operations in view of the award being a fixture until the motion was decided.

Question. Do you remember what counsel the company employed to defend its interests before the umpire?

Answer. I can not say as to all; I can give the names of two. One was Judge Jeremiah S. Black and another was F. P. Stanton.

Question. Was Judge Jeremiah Black the same Judge Black who was Attorney-General and Secretary of State of the United States at one time?

Answer. Yes, sir; the same.

Question. And was Mr. Stanton the same Mr. Stanton who was a Member of Congress and afterwards governor of Kansas?

Answer. Yes, sir.

Question. Do you recollect whether the company paid Judge Black a retainer in cash or not?

Answer. They did.

Question. Have you any recollection as to the amount?

Answer. Not definitely. I should not want to testify as to that, because I may be wild in my memory. The records, of course, will show what it was. I only remember that there was a cash retainer paid.

Question. And you are sure he did not do his professional work simply for contingent compensation?

Answer. I am positive that he had a cash retainer. I am not positive but that a part of his fee was contingent, but I think not.

Question. Do you remember whether Governor Stanton had a cash retainer?

Answer. I think not. I think his compensation was entirely upon receiving the award.

Question. Do you remember whether when you were examined by the subcommittee of the Senate Committee on Foreign Relations you were questioned as to the whereabouts of the company's books?

Answer. I remember very well.

Question. Who examined you on that point?

Answer. Senator Morgan and Mr. Foster.

Question. When you were examined as to the whereabouts of the company's books, showing their transactions in respect of the mines, had you any idea that those books at that time were in the possession of the Mexican Government?

Answer. I had not the slightest idea where they were.

Question. Had you any suspicion that the Senator who examined you knew that?

Answer. Not the slightest.

Question. Or that Mr. Foster knew that?

Answer. Not the slightest.

Question. Do you know what books, if any, were kept by the company in New York?

Answer. All I can say I know is the books I have seen. I have seen a book called the "record book," which was simply a record of the trustees' meetings, and I have seen this certificate book and a small memorandum book of the stock. Those are all the books I ever saw of the company, and I do not know that any others were kept, of my own knowledge.

Question. You have been a bookkeeper for years, as you have testified. Will you tell us whether you are what would be called an experienced or expert bookkeeper?

Answer. I have been employed in New York in several instances as an expert bookkeeper, and consider myself as such, and have advertised myself as such.

Question. And you have been a man of affairs in business all your business life?

Answer. Yes, sir.

Question. Tell us where, in the conduct of such mining operations as this company conducted at Tayoltita, in Mexico, the books would naturally and properly be kept.

Mr. MAURY. I object, as calling for the opinion of the witness as to a matter in respect of which he is not competent to testify.

Answer. They would naturally be kept at the mines or where the main business of the company was transacted.

Question. Is it not true that books have necessarily to be kept where the business to be recorded is done?

Mr. MAURY. I object, because of its leading character.

Answer. That would be the natural place, I should say, of keeping the main books of account.

Question. Have you any doubt that that is the general rule in the conduct of such affairs?

Answer. I have no doubt of it at all.

Question. Now, I ask your attention to page 345 of the bill, Exhibit B of the complainant in this case, and particularly to the annual report of La Abra Company dated the 20th of January, 1868; and I also ask your attention to page 346 of the same exhibit, where the annual report of the same company dated January 20, 1877, is printed, and I ask you to explain how it is that in the report of January 20, 1868, the amount of capital stock paid in is stated as $157,000, and in the report of January 20, 1877, which was signed by you as president, the amount of the capital stock paid in is stated as $235,000.

Answer. The difference between gold and currency statement.

Question. What was the fact as to the kind of money in which subscriptions and payments were made for La Abra Company's stock?

Answer. The par of the stock was in gold and the subscriptions were in gold. I know in Mr. Collin's case it was paid in gold and charged on his books in currency.

Question. Do you recollect in that particular case what premium, if any, was paid for the gold?

Answer. Forty per cent, in round numbers.

Question. Can you tell us in a general way what the average premium on gold was from the fall of 1865 until the spring of 1867? That would be a period of about eighteen months.

Answer. I can not give an answer that would be exact, but I can give an approximate answer.

Question. That is all I want. How comes it that you are able to give an approximate answer?

Answer. At that time I kept a record of the price of gold daily and was very familiar with it then. From certain transactions that I remember I know the price was 40—I know it was as high as 60. I can not be positive it was not higher and was not lower, but I should say about the medium between the two would be an average. That is a matter of memory purely. I have not looked at that record since the time almost. There is a printed schedule of this business that will show it exactly.

Question. In the annual report of the company for 1867 the amount of existing debts is stated as not exceeding $70,000, whereas in the annual report for 1877, which is signed by yourself, the existing debts of the company are stated as amounting to $154,431. Now, will you explain that difference of about $80,000?

Answer. There were a great many expenses incurred during that ten years. Of course, now, I was not in office all that time and therefore can not speak authoritatively, but I know from what I found out after-

wards there were a great many expenses at that time, and then there was interest on the amount as stated in 1867. The interest on that would be over one-half of $70,000, at 6 per cent. Then I should think there was fully that amount of additional expenses.

Question. Those expenses you mentioned in the former part of your testimony as connected with the defense of the award before the umpire were incurred in 1875 and 1876, were they not?

Answer. Yes, sir; very largely.

Question. And this report of yours was made in 1877?

Answer. Yes, sir; January of 1877.

Question. Would not that report of yours also include all of the expenses incurred from 1870 in the prosecution of the case, including General Adams's visits to Mexico?

Answer. Including all of it; yes, sir. It includes all the expenses that were incurred from the date of the previous report up to the date of that report. I might state that there was a statement of those expenses, and the way it was made up, presented to me at the time by Mr. Ely, who was secretary and treasurer of the company, and I was satisfied it was correct at the time when I made this report of 1877.

Question. Do you remember what that statement was?

Answer. I can not possibly remember that. I only know the aggregate. I was a very busy man then, and these things were simply presented to me for my action as executive officer. Mr. Ely had a full detail of them and a record, whatever record there was of them kept.

Question. Do you not recollect that in regard to the item of $235,000 some formal statement of Mr. Collins was shown to you?

Answer. Oh, yes. In reference to that, Mr. Collins's testimony before the commission was shown to me, in which that amount was stated and the amount of the expenses also was stated that had been incurred up to that time; but I was speaking before with reference to what had occurred since to make up the difference between the two statements.

Question. I understand that; but the annual report of 1877 differs in regard to the sum total received by the company in subscriptions for stock, as well as in regard to the indebtedness.

Answer. That difference, I have already answered, was the difference between the price of gold and the price of currency.

Question. My question is whether in addition to your own knowledge on that subject you have any recollection whether a formal statement of Mr. Collins was shown to you?

Answer. Yes, I have a recollection that this statement that he swore to was shown to me. I remember that distinctly.

Question. Now, I will ask you to look at the printed depositions which were submitted to the mixed commission, contained in Exhibit A of the bill, marginal page 30, top pages 344 and 345, and if that was shown to you [indicating paragraph] please read it, so that it may go into the record.

Answer. It was all shown to me, except this last clause. I do not remember seeing that—the statement in reference to the money, the amounts, etc.

Question. That is the part, and the only part [indicating] that I ask you to read.

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Answer (reading). "Said company obtained from subscriptions for and sales of its stock $235,000, and there have been lent and advanced to and paid for said company $64,291.06 more, making a total of $299,-291.06, and this amount was expended by said company in the purchase of said mines as aforesaid, and in the purchase of supplies, mules, machinery, and a ten-stamp mill to be used at said mines and for transportation of the same, and in the construction and erection of said mill, machinery, houses, dam, race way, and mining works generally at said mines, and in work upon said mines and the extraction of ores therefrom. The said company justly owe for office rent and expenses, salaries of officers, attorney, and counsel fees, court legal expenses, $42,500, and that said sums, with interest thereon to September 1, 1870, amount to $437,060.59."

Question. What is the date of that deposition?

Answer. Subscribed and sworn to the 28th of September, 1870.

Question. Between that time and the time you made your first annual report, what accretions were there in the expenses?

Answer. Attorney and counsel fees that had been incurred in prosecuting the claim before the commission. There were the expenses of the agent or agents in going to Mexico and procuring testimony. There were office rents, there were salaries of officers accruing, etc.

Question. And interest?

Answer. And interest, which I mentioned before, all of them aggregating the amount, making up the difference between the two reports, the one of 1867 and the one of 1877.

Question. I want to read you an extract from the complainant's bill. It is the fifteenth paragraph, on page 15: "Your orator further shows that, in fact, the said defendant, La Abra Silver Mining Company, was not compelled by threats or acts of Mexican officials or people to abandon its said mines, as stated in said memorial and in the proofs submitted by said defendant company in support of its said claim, on or about the 20th day of March, 1868, or at any other time, but that said claim was a sheer fabrication, and every material allegation in said memorial contained was a falsehood, and that all the material testimony upon which said claim was allowed and said award was made was false, and known to be so b all the witnesses giving and swearing to the same, and by the said defend ant company when it caused the same to be exhibited as true to said commissioners, and that the whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns." Now, I want to ask you, in view of all you know as president of this company in regard to the transactions of the company, not only during your presidency, but prior to it, what you have to say with reference to that charge which I have just read to you.

Mr. MAURY. This question is objected to upon the ground that it is an attempt to substitute the judgment of the witness for that of the court.

Answer. I know the charges made there to be absolutely false so far as regards the administration that I have had charge of. I have not the slightest doubt, and have every reason to believe that they are absolutely false as regards the administration of Mr. Collins. Of course I can not swear to what I do not know, but I know as well as I know my own

existence that George C. Collins never would have even stated, much less have sworn, to anything that was not in his opinion absolutely true in every sense of the word.

Question. Do you know, or have you ever known or heard of anything in your capacity as president of La Abra Company that would justify or give the slightest color to such a wholesale denunciation of fraud as that?

(Last objection repeated.)

Answer. I have not.

Cross-examination by Mr. MAURY:

Question. Where is the office in New York of La Abra Silver Mining Company?

Answer. At present there is no regular office of the company. If there was occasion for a meeting, the meeting would be held at my office in the Treasury building. That, of course, can not be said to be the office, only for the time being. The company, of course, do not pay rent in the Treasury building for an office. They have practically no office at the present time.

Question. What records of the books or papers relating to the business of the company are there?

Answer. Do you mean what have come under my cognizance?

Question. I am asking as to your memory?

Answer. I have never kept any, and never have known of any except those I spoke of, this stock book, the record book, and the minute book—the minutes of the meetings.

Question. That is the record book?

Answer. Yes, sir; that is the record book.

Question. You spoke of a memorandum of stock?

Answer. Yes, sir.

Question. Explain what that book is.

Answer. It is a little blank book, which simply contains the names of the stockholders and the number of shares that they hold, so far as my knowledge goes. I only saw that incidentally. It was shown to me at one of the meetings. When we had a meeting we would have this list to show who were entitled to vote on the stocks.

Question. Were those books a full complement of records and books that the company had?

Answer. They were all I knew anything of. I suppose there were others, of course.

Question. Why do you suppose there were others?

Answer. Because it would be unbusinesslike to conduct a business of that kind without keeping other books and accounts.

Question. Did you never hear what became of the books of the company?

Answer. I remember at one time Mr. Ely coming to my office, which was then the office of the company, and saying that he was in very much trouble to find certain records which were on the books that had been kept by Mr. Garth as treasurer, and he said he had searched high and low; that Mr. Garth had gone out of business and his old office had been closed up. He said he had been to his office and searched through the old

memoranda that were there and had been unable to find them, and was greatly troubled to know where they were.

Question. When did the company cease to have a regular office?

Answer. Since I have been president my own office has always been the office of the company. I do not know how it was before that. I really do not know when they had a regular, separate office, and when they ceased to have. I understood that Mr. Worthington had charge of the office of the company, but that is only a matter of hearsay.

Question. When did your familiarity or acquaintance with the business of La Abra begin?

Answer. It began in March of 1875.

Question. That was the first?

Answer. Yes, sir; it was about a month after the death of Mr. Collins.

Question. You speak of Mr. Ely in connection with the business of the company, and about your signing papers that were presented to you by Mr. Ely. Did he practically transact the business of the company?

Answer. He was the secretary and treasurer of the company at this time. He was the attorney and had been the attorney for a long time. At the time when I was elected president the Collins estate assigned one share to him, the same as they had to me, and the company elected him secretary and treasurer. As such he presented the statements to me when the annual statement was to be sworn to.

Question. Whenever he did, you signed it and swore to it?

Answer. I signed the first one of the statements he showed me after Mr. Collins's death, and the statement of the expenses afterwards, and all the others were exactly like it. There never was any variation in them.

Question. You were, as you described yourself before the committee, something of a figurehead?

Answer. Yes, sir. As I said then, I was simply there to represent the interests of the estate.

Question. You were looking after the interests of Mr. Collins's estate?

Answer. Yes, sir; the only interest I had.

Question. What representation of stock was there at the meeting at which you were elected president?

Answer. I was first elected president under the rules of the company by a majority of the surviving trustees after Mr. Collins's death. That was to fill a vacancy for the unexpired term. At the regular annual meeting afterwards, I can not say how many, but a large majority of the stock was represented, and my memory is that the election was unanimous.

Question. How was it represented—by the stockholders in person?

Answer. By person and by proxy. I should say there were perhaps a dozen of the stockholders—perhaps more. There was fully a dozen, perhaps fifteen. All the New York stockholders were present and some of the Western stockholders, and those that were not there were represented by proxies, as I remember, almost all the stock—of course not all of it. I had the record which would tell exactly.

Question. Is there an election every year of president?

Answer. There was for a certain length of time. We had our meeting regularly every year, I think, on the first Tuesday in January; at

any rate, early in the year. There was a provision in our by-laws whereby officers held over if there was not a regular meeting, and it was kept up perhaps for three or four years regularly annually, and afterwards, when there seemed to be no business done, the meetings were allowed to lapse, and the old officers held over under the by-laws.

Question. How long has that been that the meetings have lapsed and you have held over?

Answer. I can not tell you definitely; but, approximately, I should say six or seven years. I do not think it was more; it may have been a year or two less. It was after the death of General Adams; that is my memory of it.

Question. To go back for a moment to what you said about the inadequacy of these books that you have referred to as being the books of the company for the purposes of a company in business, what books should the company have had—what sort of books?

Answer. You ask me that as a bookkeeper?

Question. You have been already asked as to whether the books ought to be kept at the mines or not, and you have answered that question. I would like to know what your opinion is as to the books that should have been kept at the main office of the company in New York.

Answer. As a bookkeeper, if I was organizing such a transaction, I would keep duplicate cash statements, accounts of drafts, and a book on which I should keep general abstracts of regular reports received from the mines.

Question. Which regular reports in any well-ordered business would be expected?

Answer. If there was any business going on, of course. Of course included in that would be check books and memoranda of drafts drawn upon or sent to the company.

Question. As I understand your testimony, you had no personal knowledge of the statements contained in the report of 1877, which has been spoken of, had you?

Answer. No. You mean the annual report sworn to?

Question. Yes; I mean the one to which your attention has been drawn.

Answer. The only knowledge I have of it is what I have stated about the statement that was shown to me at the time. I had knowledge of expenses that had been paid; for instance, the counsel fee I mentioned before as having been paid to Judge Black, and I had knowledge of many of the expenses. I had no record nor any detail. I had a general knowledge of a good many of these expenses.

Question. Those expenses were paid before you became president?

Answer. Yes, sir; they were paid before I became president; but they were paid between the report of 1867 and the report made in 1877, making up a part of the difference between the reports.

Question. But you had no cognizance of those transactions, had you?

Answer. I say I had cognizance of some of the transactions as to the payment of some expenses. I had cognizance of the raising of money—helping to raise money, one thing or another.

Question. Raise money for what?

Answer. To pay expenses incurred in this matter, to help pay Judge Black's fee, and to pay other expenses—not the expenses of General Adams, because that was before my time, but incidental expenses and attorneys' fees which had to be paid.

Question. What relation had you to the company then?

Answer. I was acting the same as I was before. I think a part of this was done before I was president and a part afterwards. For instance, young Mr. Collins, at the time Judge Black was to be paid, I know he contributed out of his own private funds, which he was not at liberty to do from the estate, $2,500; and I know that other sums were raised from different parties; but as I say, I had no record that showed in detail at all, until this record was shown me by Mr. Ely at the time when the statement was made up.

Question. Did you ever have an examination or search made for the books and records of the company?

Answer. None; except what I speak of—I do not know how much. Mr. Ely may have made others, but that is the only search I knew of, and I had personally nothing to do with that.

Question. Has Mr. Ely any active connection with the company at this present time?

Answer. He is the secretary and treasurer.

Question. Does he live in New York?

Answer. No, sir; he lives in Girard, Pa.

Question. Does he go to New York in connection with the business of the company?

Answer. Yes; he has been quite frequently. I say quite frequently; I do not know how frequently. I know I have seen him once this fall, and expect to see him again very soon. He wrote me the other day he was coming.

Redirect examination by Mr. KENNEDY:

Question. When Mr. Maury was questioning you about the books he did not distinguish between the books that were actually kept by the company, whatever they were, in New York, and the books that were kept by the company in Tayoltita. Now, in your answers did you have reference only to the books, whatever they were, that were kept in New York, or to the books of the company that were kept at Tayoltita?

Answer. In my answer to that question about the books I referred to the general main books of the company, which I said would naturally be kept at the mines. As I understood Mr. Maury's question it was, What books would ordinarily be kept in New York under such circumstances?

Mr. MAURY. And in reference to such books you have mentioned as being the books there and in your control?

The WITNESS. Yes, sir.

Question. Will you state again what books, to your knowledge, were kept by the company in New York?

Answer. To my knowledge only this stock certificate book, that memoranda of the stock of subscribers, and the minute or record book. When I speak of record, I mean the record simply of the trustees' meetings.

Question. Are those three the only ones?

Answer. Those are the only ones I know of.

Question. What you call the memorandum book, showing the subscribers and the stock they held, would be made, would it not, from the stock certificate book?

Answer. Yes, sir.

Question. So that when you have the stock certificate book you have the original source of any possible list of subscribers and subscriptions?

Answer. Exactly so.

Question. Now, do you know, or has it come to your official knowledge as president, that La Abra Company never even kept a check book, but that the drafts from the mines were paid by the treasurer himself?

Mr. MAURY. I object to that question as rather leading.

Answer. My answer is, I never heard anything of the kind before, and know nothing of it.

Question. Then you have not read Mr. Garth's testimony, have you?

Answer. No, sir; I have not.

Question. In your answer to Mr. Maury's question regarding books proper to be kept by the company in New York, you spoke of a transcript which, in your opinion, should have been made of the reports or records kept at Tayoltita, did you?

Answer. Yes.

Question. Now, in the nature of things those reports of transcripts would need to be from originals, would they not, kept at the mines?

Answer. Necessarily copies from books kept there.

Question. Have you any reason to believe that transcripts of the accounts kept at the mines were not sent to the New York office?

Answer. None whatever.

Question. And you did not intend to have it inferred that such transcripts or reports were not sent from the mines to the New York office?

Answer. No, sir. I simply said if I was organizing the keeping of the accounts of the company I should organize it on that basis.

Question. Are you not officially aware, from your knowledge of records of the company, that such reports were, in fact, sent by Mr. Exall and Colonel De Lagnel to Mr. Garth?

Answer. Officially I have no knowledge of it.

Question. Have you recently seen books of La Abra Company; and if so, where, and in a general way to what extent in point of kind and number?

Answer. I have seen books on file in the Court of Claims this morning, and they consist of three different sets. The first set comprises the cashbook, a journal, and a ledger. The second set, kept under the De Lagnel administration, I think they were kept in the backs of some old books that had been used in the store and utilized eventually until he bought a new set. The next set consists of a journal and cashbook combined in a separate cashbook, and his only cash account in that is simply a general cash account in the ledger. It may be said to be a journal and cash account combined, and a ledger, and a book. I do not know what they call it exactly. I have not examined it thoroughly enough yet. It is hardly a daybook, and yet it is a memorandum. I can not really give it a proper name until I have seen more of it than I have already. I was only looking at it a short time this morning.

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Question. Had you ever looked at any of those books before?

Answer. No, sir; I did not know they existed except by hearsay. Then I might say, in addition, I have seen a large number of memoranda there that are marked as different exhibits in this case. Some seem to be important and others very unimportant from just a cursory examination of them.

Question. Can you name any book which would have been necessary for the company to keep in New York other than the books which you have named, in view of the books that you have seen in the Court of Claims to-day, and which you have assumed were kept at Tayoltita?

Answer. I do not think I quite understand your question.

Question. My question is, Can you name any books that it would have been absolutely necessary for the company to keep in New York other than the books which you have mentioned as having been kept by the company—I mean absolutely necessary for the conduct of its business—in view of the books that are admitted to have been kept at Tayoltita, and which you have seen to-day?

Answer. Oh, yes; there should have been an abstract that I would have kept if I was organizing the company. There should have been an abstract showing exactly when each report was received, exactly the amount of money expended, and for what it was expended—an abstract of the reports.

Question. Would that in your opinion be any better authority or evidence as to what actually was expended than the original records from which that abstract or transcript would necessarily have been made?

Answer. It would not be as good, because the original entry is the highest and best. These abstracts, in order to be used in evidence, would have to be verified.

The examination by counsel being concluded, the witness, in answer to the final interrogatory by the commissioner, says he has fully stated all that occurs to him at the present time material to the claim in issue.

Signature waived.

[SEAL.]

ROBT. L. MILLER,
United States Commissioner.

Deposition of Isaac Sisson, taken at Washington, D. C., December 2, 1895.

Present, same counsel as aforesaid.

ISAAC SISSON, being produced as a witness on behalf of the claimant, and being first duly sworn, testifies as follows:

That his name is Isaac Sisson; that he is 66 years of age; that he resides at Billings, Duchess County, State of New York; that he is by occupation a farmer; that he has no interest, direct or indirect, in the matter which is the subject of inquiry in said cause, and that he is in no degree related to the claimant.

By Mr. KENNEDY:

Question. Were you examined in the controversy between the Mexican Government and La Abra Company during the investigation in Congress?

Answer. Yes, sir.

Question. About how long ago was that?

Answer. I think about six years.

Question. While you were commercial agent or consul of the United States at Mazatlan, did you take the depositions of persons who testified in regard to claims of citizens of the United States against Mexico?

Answer. Yes, sir.

Question. For submission to the mixed commission?

Answer. Yes, sir.

Question. That commission was in session, where?

Answer. In Washington.

Question. Under a treaty, was it not?

Answer. Under a treaty.

Question. Did you take any depositions on behalf of citizens of Mexico against the United States?

Answer. Yes, sir.

Question. Were the two classes of depositions taken in the same way?

Answer. Yes, sir.

Question. Do you remember taking the deposition of a man by the name of Juan Francisco Gamboa?

Answer. Yes, sir.

Question. Who else, if anybody, was examined by you at the same time?

Answer. Mr. Loiaza, I think.

Question. You do not remember his initials, do you?

Answer. No, sir; I do not.

Question. Will you look at this paper, marked No. 489, and see whether you can identify it; and if so, tell us what it is.

Answer. This is the deposition of Gamboa.

Mr. KENNEDY. I want to read the certificate of this deposition, because it is not printed with the depositions in the bill of the Government.

Mr. MAURY. Is it different from the certificate of Gamboa's deposition which is printed in Exhibit A?

Mr. KENNEDY. Yes. "Consulate of the United States, Port of Mazatlan, State of Sinaloa, Republic of Mexico. Carlos F. Galan, after being duly sworn, deposes and says: I was born in Spain and now reside in El Oro street in said port of Mazatlan; I am by profession and occupation an attorney and counsellor at law, printer and publisher of a newspaper called the Occidental, published at said port of Mazatlan, and also an interpreter and translator of the Spanish and English languages; that I was called by Juan Francisco Gamboa, the aforementioned witness, and by Isaac Sisson, esq., commercial agent of the United States of America in and for said port of Mazatlan and its dependencies to act as his official interpreter and translator in taking the deposition of said witness Juan Francisco Gamboa; that the contents of the above deposition are the correct, true, and literal answers made by the said witness to the questions propounded by said commercial agent, which I translated to the said witness in Spanish; that I have no interest, contingent or otherwise, in the claim to which the foregoing deposition relates; that I am neither the agent or attorney for said claimant or for any other person having such interest, and further said not. Sworn to and subscribed before me

this 14th day of May, A. D. 1870, at 7 o'clock p. m. (Signed) Carlos F. Galan, interpreter and translator." Now, Mr. Sisson, you have heard the sworn statement of Mr. Galan which I have just read, and I ask you to state whether or not it is true.

Answer. It is true.

Question. Did you notice anything peculiar in regard to Gamboa's condition?

Answer. No, sir.

Question. Was he in any degree intoxicated?

Answer. No, sir; I do not think he was.

Question. Did you hear or notice any controversy of any sort between him and anybody who was present in regard to his signing and swearing to his deposition; any controversy or any persuasion exerted upon him in words or in any other way?

Answer. No, sir.

Question. I would like you to look at this paper and see if you can identify it.

Answer. Yes, sir.

Question. What is that paper?

Answer. José Ma. Loiaza's deposition.

Question. I want to read the certificate attached to that—the certificate is not printed in the Government's exhibits:

(Reads Carlos F. Galan's sworn statement, as interpreted and translated, attached to Loiaza's deposition, which is in the same form as that attached to Gamboa's deposition, *supra*.)

Question. In what language is that deposition?

Answer. Spanish.

Question. Now I want to invite your attention to the eleventh paragraph of the bill of complaint of the United States in the case in which you are now testifying, and especially to the part that I will read: "And the said Republic of Mexico, in the said month of June, 1877, procured from the said J. M. Loiaza an affidavit, stating that the affidavit made by him in May, 1870, in support of said claim, was false, and that the same had been made when affiant was intoxicated and under the persuasion of said Adams." Now I want to ask you whether there is any truth in the statement that Loiaza's deposition was made when he was intoxicated?

Answer. No, sir; he was not intoxicated when he made that deposition in the consulate.

Question. Did you ever in all the course of your consular office take the deposition of a man who was under the influence of liquor?

Answer. No, sir.

Question. Now I want to invite your attention to an affidavit which is printed in Exhibit B of the Government's bill, purporting to have been made by J. F. Gamboa? It is printed on page 328 of Exhibit B—that is the top paging. I will read a sentence or two from this affidavit: "To the second, he said that he remembers having signed a deposition relating to La Abra Company's claim; to the third, he says that he does not know whether the translation read to him by the court (which is the same presented by the district attorney) contains literally the words of the deposition which he confesses to have signed, and of which he has

not at present the least idea, owing to the state of intoxication he was in when he signed it." That is Mr. Gamboa's alleged statement. What have you to say in regard to the truth or falsity of that statement?

Answer. I say he was not intoxicated when he was examined and signed that deposition.

Question. Now I ask your attention to an affidavit purporting to have been made by José Maria Loiaza, and printed on pages 330 and 331 of the same exhibit: "Deponent certainly went to Mazatlan, and about 8 or 9 o'clock in the evening they made him go to the consul's house where there were, besides this official, Mr. Alonzo W. Adams and Mr. Galan, and as deponent was a little intoxicated—a habit he used to indulge in at that time, but from which he has been entirely cured for the last five years, as it is public and notorious in this village—on his appearing before said gentlemen they presented him his deposition, reading it to him in Spanish—the contents of which are different from those of the one shown him to-day—and making suggestions and repeated offers to him to sign it, which he did without seeing even whether it was written in English or Spanish." Now what have you to say in regard to the allegation that he was a little intoxicated?

Answer. He was not intoxicated when he signed it, and I deny it.

Question. What have you to say in regard to "suggestions and repeated offers to him to sign it?"

Answer. No such thing in my presence or hearing.

Question. Was the deposition signed and sworn to in your presence?

Answer. Yes, sir.

Question. Is it true it was read to him in Spanish, as he alleges here?

Answer. Yes, sir.

(The depositions of Gamboa and Loiaza, in Spanish, that have been shown to the witness, were brought to the place of examination from the Department of State by Mr. Mayo at the request of defendant's counsel.)

Question. As near as you can recollect, when was it that you arrived at Mazatlan—I mean when you first went down there as the commercial agent of the United States?

Answer. February, 1867, I think.

Question. Now, when you were examined in the Senate committee you sometimes said that you went down there in 1866, and sometimes in 1867, and I think once you said you thought it was 1868. I want to ask you now whether in the meantime you have refreshed your recollection in regard to the actual time when you arrived there?

Answer. Yes, sir; I have.

Question. In what way have you refreshed your recollection?

Answer. By looking at some documents I have had, and by referring to correspondence I have seen from the Secretary of State.

Question. State as positively as you can the time when you arrived, as commercial agent of the United States, at Mazatlan.

Answer. February, 1867.

Question. Now you said at your examination before the Senate committee that it was shortly after your arrival at Mazatlan that you saw Mr. Exall?

Answer. Yes, sir.

Question. About how long do you think it was after your arrival that you saw him?

Answer. It could not have been more than two or three weeks; somewhere along there; a short time after my arrival, anyway.

Question. Did you ever see Mr. Exall after that?

Answer. No, sir.

Question. Now you said in your examination before the Senate committee that you thought Mr. Exall at that time was on his way home?

Answer. Yes, sir.

Question. What made you think that?

Answer. Because there came down to the steamer several gentlemen—that is, several miners came down to the steamer to see the steamer and to see a person off, and I got my impression that Mr. Exall was the man who was going to sail. That is what I said, and I think I said before that it was Exall who was going to leave.

Question. You are still sure that one of the party was going home by the steamer?

Answer. Yes, sir; I am sure of that.

Question. Did you ever meet Colonel De Lagnel?

Answer. I do not know that I ever did.

Question. And you do not know whether he was one of the parties?

Answer. I can not swear to it positively, although my impression is that he was. There were several of them that came down there, as they generally did, to meet the steamer, but as I said before, I happened to meet them altogether there. We passed very few words, and I do not think it was more than five or ten minutes that I saw them. They were at a hotel, and I was called in there and introduced to them.

Question. Do you happen to know whether you were actually in Mazatlan at the end of February or the early part of March, 1868, that would be just about a year later?

Answer. I can not tell.

Question. As a matter of fact, did you ever have occasion to leave Mazatlan?

Answer. Yes, sir.

Question. Do you remember any particular occasion in 1868?

Answer. Yes, sir.

Question. When you left Mazatlan?

Answer. I remember there was one particular occasion when I left; there was a revolution out at Rosaria, what they call the Tajo mine.

Question. About what season of the year was that?

Answer. I should say it was in the spring of the year, along in March, probably; it was in the latter part of the dry season.

Question. When does the rainy season begin?

Answer. Along the first of June they consider the rainy season.

Question. How does that affect travel?

Answer. You can not get into the interior very well during the rainy season. It affects travel a great deal.

Question. And your recollection is on this particular occasion it was prior to the rainy season that you left Mazatlan?

Answer. Oh, yes; it was prior to the rainy season that I left Mazatlan, because I went out with the stage and the mules. As I said before, there had been a revolution, and two or three Americans killed there, and they wanted me to come out there and get their names and records and correspond with their families.

Question. When you say a revolution, do you mean an attempt to subvert the Government, or a disturbance?

Mr. MAURY. Question objected to upon the ground that it is leading.

Answer. I will have to answer that in this way: It would not affect the General Government, but it was a revolution in regard to State affairs.

Question. Will you tell us what the rule is governing the conduct of citizens of the United States when they are injured in their persons or their property in a foreign country; whether, in the first instance, they apply to their own Government or to the local authorities?

Mr. MAURY. Objected to on the ground that it is leading, and asks the witness' opinion as to a matter in respect of which he is not competent to testify.

Answer. According as I understand the international law, they first apply to the authorities of the country where they are.

Question. Do you recollect what was the main subject of your examination before the Senate committee?

Answer. The main subject, I think, was in regard to a deposition of Mr. Dahlgren. That was in my subpœna that I received.

Question. I want to invite your attention to a statement in the bill of the Government. It is on page 18, near the foot, and it is just at the close of the long sixteenth paragraph: "And that the affidavit of the said Charles B. Dahlgren, as the same was submitted to said commission by said defendant company, was false, and was not made by the said Dahlgren." Will you say whether the statement that the affidavit so called, filed before the commission, and purporting to have been made by Dahlgren, was not in fact made by him?

Answer. It was made by him.

Question. In your presence?

Answer. Yes, sir; in my presence.

Question. The deposition was produced, was it not, at your examination before the Senate committee?

Answer. Yes, I think it was.

Question. And you identified it?

Answer. I think I did.

Question. Were you present at the time that Mr. Dahlgren's deposition was in course of preparation?

Answer. Yes, sir.

Question. Were you present when it was subscribed and sworn to by Mr. Dahlgren?

Answer. Yes, sir.

Question. Was it, or was it not, read to Mr. Dahlgren before he subscribed and swore to it?

Answer. It was read over to him.

Question. Do you remember who read it to him?

Answer. I think I read part of it myself. I do not know whether it was Mr. Danglada or Mr. Pena who read the other part.

Question. Who was Mr. Danglada?

Answer. My secretary.

Question. Was he versed in Spanish and English?

Answer. Yes, sir; he was a Mexican.

Question. And what other work did he do in your consular office.

Answer. He was general clerk and did a great deal of the writing when steamers were there, attending to everything of the kind that appertains to the consulate.

Question. Who did your translating?

Answer. He did.

Question. Do you recollect whether at the time of your examination before the Senate committee you were requested to furnish the company's counsel with the address of anybody who could substantiate your statement in regard to the manner in which Dahlgren was examined?

Answer. I think so.

Question. Whose address did you give them?

Answer. Mr. Danglada's.

Question. Now, I want to read a sentence or two from page 938 of Mr. Dolph's report: "The chairman. I will read it: Shellabarger & Wilson, counsel of La Abra Silver Mining Company, sent a dispatch addressed to Domingo Danglada, at Mazatlan, dated February 21, 1889, at Washington, D. C., as follows: 'Dahlgren swears he did not sign his deposition taken September, 1872, before Sisson, about La Abra claim, but signed a blank sheet of paper. Sisson swears that Dahlgren signed said deposition when fully written out, and it was read to Dahlgren by Pena in your presence and you tied it up. Which is the truth? Wire at our expense. Shellabarger & Wilson.

"'Via Galveston, February 23, 1889, dated Mazatlan, 23.'

"'Shellabarger, R. J. Wilson, Washington, D. C. Sisson is correct. Dahlgren signed deposition when fully written out. D. Danglada.'"

Now, Mr. Sisson, I want to ask you the question whether the words that I have read to you, and am about to read to you again are true: "Sisson swears that Dahlgren signed said deposition when fully written out and it was read to Dahlgren by Pena in your (Dahglada's) presence and you tied it up." Is that true?

Answer. Yes, sir; that is, a part of it is true. All of it may not have been read by Pena, but it was read there before me.

Cross-examination by Mr. MAURY:

Question. In the course of your examination, with reference to the deposition of Mr. Dahlgren your language is that you were present when that deposition was in course of preparation. You did not explain what you meant by the words, "in course of preparation." What did you mean by those words?

Answer. While his deposition was being written out.

Question. Written out by whom?

Answer. I think by Mr. Pena.

Question. Was anybody else present?

Answer. Oh, yes.

Question. State who were present besides Mr. Pena?

Answer. There were Mr. Danglada, Mr. Pena, and Alonzo W. Adams. It seems to me there were one or two more, but I can not just think at this moment who they were. But those I have indicated were there anyway.

Question. Was Mr. Adams engaged also in reducing this deposition to writing?

Answer. He stood by a looker-on.

Question. Did he take any part in it?

Answer. He and Mr. Dahlgren, I think, had some conversation in regard to it.

Question. Did Mr. Adams ask Mr. Dahlgren any questions?

Answer. I think he did.

Question. Was all this done before you; were you sitting there?

Answer. Yes, sir; or standing around most of the time. I might possibly have been in another room a moment or two at times a little.

Question. What do you mean by standing around?

Answer. I mean this: They were sitting and occupying my desk writing out that deposition and preparing it among themselves, talking over it. I was walking around, and, as I said before, right off from the consulate room proper there was another room, a small room, what we call a reception room, where a little private business is done sometimes, and I might have stepped in there to speak to somebody or other and went right back again. But I was within hearing all the time, because there was a very large door there, as big as that window [indicating]. My desk was right here [indicating], and the door you passed through was just like this [indicating].

Question. You were, then, attending to other consular duties for other people?

Answer. Yes, sir; if a man came in and asked a question I answered it.

Question. And after it was answered you went into the next room?

Answer. I went in there very little.

Question. Still you were in there?

Answer. I was in there at times. Allow me to explain. When the deposition was comparatively finished, then it was read over, and I was right there standing as close to him as to here [indicating].

Question. You say when it was comparatively finished?

Answer. Yes, sir; when it was gotten through. Of course there were interlineations.

Question. What do you mean by "when it was got through?"

Answer. When it was finished. There may have been interlineations when it was got through, and to make it look nice it was copied over and copied straight. That is the manner in which the deposition was taken. Then it was read over, as I said before, and I stood as near to Mr. Dahlgren as I am to this gentleman here [indicating]. I think one of us was on one side of Mr. Dahlgren and the other on the other side when it was read over to him. I might have read a part of it myself, and might not. It was quite a lengthy deposition. All the time I was there, and saw him when he signed it.

Question. You took a part in it as consul, particularly when it was copied and read?

Answer. Yes, sir.

Question. That is the time your attention was particularly interested?

Answer. I gave my full attention to it then.

Question. Before that the parties were together there getting up the deposition, getting it in shape and proper form?

Answer. Yes, sir.

Question. And talking among themselves?

Answer. Yes, sir; talking among themselves.

Question. Who was this Mr. Pena; was he not a merchant there?

Answer. No, sir; he was a school-teacher. He was the head of the schools of the port.

Question. Not a member of the banking or commercial firm there?

Answer. No, sir; that is another Pena altogether. This man was a teacher and translator. He was not the Pena who was a banker and large merchant there. That is a different man.

Question. Was any of this deposition or affidavit of Mr. Dahlgren prepared outside of your office?

Answer. I can not say.

Question. You do not know whether Mr. Adams or Mr. Pena brought the deposition in rough to your office?

Answer. They might, possibly.

Question. Mr. Adams was the agent, was he not, of La Abra Company, the claimant in this case?

Answer. Yes, sir.

Question. And he was charged with the duty of getting up these depositions in Mexico?

Answer. Yes, sir.

Question. Did he not sometimes get up these depositions at his hotel and then bring them before you and get them in shape?

Answer. They would get them in shape there part of the time.

Question. And he brought it to you?

Answer. Then it would be brought up. Then it would be all fixed over again, as you may say, all talked over there and all written out anew.

Question. The witnesses present?

Answer. The witnesses present; everything of that kind; yes, sir.

Question. How long were these gentlemen talking over and getting up this deposition of Dahlgren's?

Answer. I do not know. It must have been three or four hours; maybe longer.

Question. And your particular attention was directed to what was going on when, as you say, the paper was finished?

Answer. Always; whenever a deposition was taken I gave it particular attention.

Question. That is, after they had made a fair copy from the rough notes?

Answer. Yes, sir. There never was a deposition came out of that office or never was a man signed one but it was read over to him word for word—either for or against the United States. It made no difference to me.

Question. You took a number of depositions, did you not?

Answer. Yes, sir; different claims and different people.

Question. Have you ever examined the certificate which you appended to Dahlgren's deposition?

Answer. I think I have.

Question. I now hand you for examination the certificate to C. B. Dahlgren's deposition, to be found at page 406, Exhibit A to complainant's bill?

Mr. KENNEDY. Counsel for La Abra Company suggests that if there is any importance attached to the certificate by counsel for the Government the original, which is on file in the Department of State, and which was produced before the Senate committee, should now be produced.

Question. Have you read it?

Answer. I have read it.

Question. Is that all right.

Answer. Yes, sir.

Question. In this certificate which you have read it is said that the witness was first duly sworn. Do you mean by that that he was sworn before the deposition was prepared in rough?

Answer. No, sir.

Question. What do you mean?

Answer. He was sworn when they had got through.

Question. Before the fair copy was read to him or after?

Answer. Before the fair copy was read to him; when it was, as I said before, comparatively finished; when it was copied off nicely. Then the deponent was sworn.

Question. You say in this certificate that the witness was first duly sworn to answer interrogatories propounded by you. Did you put any questions to the witness?

Answer. After it was through with I asked him some questions in regard to things—I might possibly; yes.

Question. Did you go through the deposition, putting question after question and having the answers written down by your clerk or secretary in your presence?

Mr. KENNEDY. Question objected to because the deposition is in the form of questions and answers and is its own best evidence.

Answer. No; I do not think I did.

Question. Was not all that done before you gave your particular attention to the matter?

Mr. KENNEDY. Objected to because the witness has testified over and over again that when the deposition was in its final form it was read over to the witness word for word—that is, by interrogatories and answers—after he had been first duly sworn, and I object to the reiteration of those questions on a matter that has been so clearly explained.

Answer. No, sir.

Question. Have you not said that when you gave your particular attention to the matter the deposition was copied off fairly?

Answer. Yes.

Question. So that all the questions and answers appeared written out?

Answer. They appeared written out. When the thing was finished, it all appeared there.

Question. And the witness was then sworn by you and the deposition read to him, as I understand?

Answer. That is the way of it.

Question. How far did your consulate extend; over what territory?

Answer. It would be hard to tell that. It extended, including the State of Durango, a part of it. There was no consulate up there, and no consulate below to Acapulco, and no consulate above until we get up to Guaymas. Durango was considered in my district.

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Question. You speak of some inaccuracy in your testimony before the Senate committee and about the refreshment of your memory.

Answer. Nothing but the dates.

Question. Please state in what way your memory is refreshed, and how as to dates.

Answer. By some correspondence I looked at at home and by correspondence I saw from the State Department in regard to some of my old letters; and then, in regard to my leaving, when I left home I looked up some of the old dates that I found in my book.

Question. Before you came down here the other day to testify on this occasion?

Answer. Yes, sir.

Question. How did you come to refresh your memory?

Answer. Because I knew I had made some mistakes before; I thought I had.

Question. Then you did it of your own mind?

Answer. Yes, sir.

Question. You were not asked to do it?

Answer. No, sir. I will explain as to how that happened, for the simple reason that all business is done there in the winter season, and it is a little before New Years, or a little afterwards—you will find there will not be thirty or sixty days on each side; when you put it in years it will be very little. I thought I started there in 1866. I was more than six weeks getting there, and this threw it into 1867, and sometimes in speaking I would say I was at Mazatlan in 1866. I did start for there before December, in 1866, but I did not get there in 1866, because the steamer went around, and I thought I would look it up and see if I could not tell when I got there, as I made such bad work of it in the other deposition.

Question. And you say you met Mr. Exall upon your arrival there?

Answer. That is my opinion. I said shortly after my arrival.

Question. Can you fix that by any paper or reference?

Answer. I fix it for the simple reason that it was the first time I met all those gentlemen.

Question. Who were the gentlemen besides Mr. Exall?

Answer. They came down from Durango. I think there was a Mr. Best, and I think there was a Mr. Rice there, though I am not sure. There was Doctor somebody—I can not think of his name now. It has been a good while ago to think of everybody's name. There were at least six or seven of them.

Question. Did you have much conversation with them?

Answer. No; not at that time.

Question. Did you say you met them at the hotel?

Answer. Yes, sir; I happened to meet them at the hotel. I went in and was introduced to them, and among the party was Mr. Exall.

Question. Did you see Mr. Exall again?

Answer. No, sir; I never saw him afterwards, to my recollection. I never spoke to him.

Question. Are you able to say with any degree of certainty that you were not in Mazatlan in March, 1868?

Answer. No, sir.

Question. You do not say you were not there in March?

Answer. No, sir; I can not swear I was there or was not there. I can not tell—I mean at a particular time or a particular day. I was not absent from my place any time ten days.

Question. You were not absent from your office in Mazatlan?

Answer. No, sir; not from my consulate, except when I had leave of absence. I was out in the country some time.

Question. But you were on duty in your consulate in March, 1868?

Answer. Yes, sir.

Question. In your deposition before the Senate committee you were asked this question (p. 798): "Q. And did you not at that time know anything of what Dahlgren had said to Adams and Pena before that oath was administered by you, except as you heard it read over—that paper?—A. No; I do not know anything of what they had done before. As I said before, it was not my business to get up depositions, but it was my business to swear people to tell the truth after they did get them up. That was all." Is that correct?

Answer. Yes, sir.

Question. Again you were asked on the same page: "Q. You think you had no duty there at all as an examining consul to see that the witness in giving his testimony did justice to the Government of Mexico?—A. No; it was my duty to see that the thing was done as correct as I could, I suppose, but I was not attorney on the part of Mexico." Is that correct?

Answer. Yes, sir.

Question. At page 796 you were asked this question: "Q. How does it happen that you do not know what these rough notes contained if this examination was conducted before you as consul or presiding magistrate on that occasion?—A. The examination was not conducted before me. I had no more—that was not my business. My business was after they got through and the deposition was ready. Then it was my business to look over it, but not to help them to fix it up." Is that correct?

Answer. Yes, sir.

Question. Referring to the part that Pena and Adams took in this business, you were asked this question (p. 797): "Q. What do you mean by examined by them? Did they examine him, or did you?—A. They got together and got this up by themselves. They got together and made up this deposition. Q. Which one are you speaking of now?—A. The rough one. Then it was taken from that, and then when they got through and got it all right to satisfy themselves, Mr. Pena copied it as it should be copied to make a decent, respectable deposition of it." Is that correct?

Answer. Yes.

Question. Was Mexico represented in any way when the claimants' depositions were taken before you?

Answer. No.

Question. When you were examined before the Senate committee you were asked (p. 808), with reference to the taking of Dahlgren's deposition: "Q. Then you did not pay much attention to what was going on?—A. Not a terrible sight; no. All that I was watching for was

when they got it through and got it all right I would have it signed and sealed and got rid of as soon as possible." Is that correct?

Answer. Take my meaning of it, yes. "When they got through and got it all right, signed, sealed, and sworn to," ought to be there in some way.

Question. Who is Carlos F. Galan?

Answer. He was a gentleman there in Mexico, a man of good education and ability. He had studied law, I think, in California, and practiced law there some, and understood Spanish and English very well. He had been governor of Lower California and held several offices there, I do not know what. He was editor of a paper then and doing this kind of work when this took place, practicing law and editing a paper.

Question. Was he counsel in any of these cases against Mexico before the commission?

Answer. No, sir; not that I know of.

Question. Was he employed in taking testimony before you as consul in these cases before the commission?

Answer. He was employed sometimes as an interpreter and as assistant. Mr. Adams had him employed to assist him sometimes, and sometimes I would call on him. If Danglada happened to be absent, or very busy, something of that kind, sometimes I would call on Mr. Galan to assist me in interpreting, especially where they were Mexicans. Of course if they were Americans I did not want any.

Question. Will you say whether the letter which I am about to read is a copy of a letter which you received?

Mr. KENNEDY. Before that letter is read counsel for respondent inquires what is the purpose of reading it?

Mr. MAURY. The purpose of reading it is to enable the court to better understand the relation of the witness to the subject-matter of his testimony.

Mr. KENNEDY. Counsel for La Abra Company objects to the introduction of the letter that counsel for the Government proposes to read, on the ground that it is relevant only, if at all, for the purpose of impeaching the witness, and that for that purpose it is not competent, because it does not go to the character or reputation of the witness for truth and veracity in respect of the matters of fact on which he has been examined.

Mr. MAURY. Counsel for the United States submits in reply that the letter objected to does bear upon the manner in which the witness performed his consular duties, and is proper to be considered in that aspect of the question.

Mr. KENNEDY. Without prolonging the discussion, counsel for La Abra rejoins that there is nothing in the letter which specifies any part of the consular conduct of the witness to which the Government had any objection, and that the attempt to connect the resignation, or removal even, of an officer under our form of government, after he had served six or seven years in that office, with any particular part of his duties, seems to counsel to be unfair, as well as in violation of the rules of evidence.

Question (reading). "Department of State, Washington, December 2, 1874. Sir: I have to acquaint you that for reasons satisfactory to the Department, it is deemed necessary to make a change in the office of

consul at Mazatlan. It will accordingly not be advisable for you to return to your post with the intention of resuming the duties of your office. Under these circumstances the Department will be pleased to receive your resignation. I am, sir, your obedient servant, Hamilton Fish." On the left-hand corner, opposite Mr. Fish's signature is: "Isaac Sisson, consul of the United States at Mazatlan, now at Lithgow, Dutchess County, N. Y."

Answer. Yes, sir.

Redirect examination by Mr. KENNEDY:

Question. You stated that your consulate included Durango. Did you mean that?

Answer. I meant the city of Durango. The consulate generally extends halfway to the next one. The next one is generally considered, and that would take in the city of Durango. I always considered it in my consulate, and did business there.

Question. What would be half the distance from Mazatlan to Durango?

Answer. I have forgotten the distance. I think about 100 miles.

Question. Do you not know that Dahlgren claimed to be United States consul for Durango?

Answer. Yes; he claimed to be United States consul for San Dimas.

Question. Where is San Dimas?

Answer. That is where his mine was. It is a long way from Durango; it is quite a way from Durango.

Question. How far was San Dimas from the mines of La Abra Company?

Answer. Right there, or very near there. It was called San Dimas.

Question. Tayoltita was in San Dimas mining district?

Answer. Tayoltita was in San Dimas mining district.

Question. But was about 10 or 12 miles away from the town of San Dimas?

Answer. Yes, sir.

Question. Was the United States Government represented by anybody at the taking of the depositions in support of claims against the United States?

Answer. No.

Question. In both cases the depositions were taken without counsel or the presence of any Government officer on the part either of the United States or Mexico?

Answer. Yes, sir; both sides. There was never any representative of either nation, you may say; no one on either side.

Question. Do you know or not whether Mr. Galan was counsel for citizens of Mexico in any claims against the United States?

Answer. I think he was.

Question. Now, you have been asked whether certain questions and answers in your examination before the Senate committee were correct or not. Do you desire that any of those isolated questions and answers shall be taken as correct, or do you wish the whole scope and tenor of your examination by the Senate committee to be taken as the correct statement of your testimony?

Answer. I wish the whole tenor of it to be taken.

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Question. You have been asked whether you received a certain letter from Mr. Hamilton Fish, dated December 2, 1874, or not, and you have said that what was read to you is a correct copy of a letter that you dip actually receive. I ask you whether any complaint was ever made by the Department of State in respect to any action that you ever took or did not take in connection with La Abra Company's claim, or any of those claims which were before the mixed commission?

Answer. No, sir; I was never reprimanded for any act I ever did down there by the Department.

Question. What year was it in which you took the most of those depositions for La Abra Company?

Answer. I should think probably 1870 and 1872.

Question. So that this letter of December 2, 1874, was written four years or more after the depositions which were taken before you in 1870, and two years or more after the depositions which were taken before you in 1872?

Answer. Yes, sir.

Question. Do you happen to remember whether there were other letters that were presented to the Senate committee from the Department of State at the time that the letter was presented, a copy of which Mr. Maury has read to you?

Answer. I think there were.

Question. Do you recollect whether there was a letter there (it does not seem to have been printed with this record) in which Mr. Pena, the man whom you have mentioned as having taken down Mr. Dahlgren's testimony, was recommended for United States consul?

Answer. I think there was.

Question. Can you account for the fact that this letter of Mr. Hamilton Fish is the only one of those letters that were presented to the Senate committee that has been printed in this record?

Answer. No; I can not.

Question. Do you recollect that Mr. Alonzo W. Adams was alluded to in one of the unprinted letters as a gentleman of high standing who could give testimony as to Pena's fitness for United States consul?

Mr. MAURY. Objected to upon the ground that the letter itself is the only evidence of its contents.

Answer. Yes, sir.

Question. Did not the whole of that correspondence as produced before the Senate committee show that the opposition to you was simply an attempt to get you out and put Pena in?

Mr. MAURY. Objected to on the ground that the correspondence speaks for itself and should be produced.

Answer. That appears to be so.

Mr. KENNEDY. The answer to Mr. Maury's objection is that the United States, standing sponsor in this suit for the Government of Mexico, is responsible for the defect in the record, which, in its present defective condition, implies a state of facts entirely different from the state of facts as it actually existed in regard to Mr. Sisson's resignation as consul.

Mr. MAURY. Counsel for the Government states that the statement of the learned counsel for La Abra Company is no basis for departing from the rule as to the production of primary evidence.

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Question. Did you ever receive any letter or communication from the Department of State charging you with any misconduct in your office of consul or commercial agent of the United States from the commencement of it to the end?

Answer. No, sir.

Question. Were you ever asked by the Department of State of the United States, or any official of the United States, to explain any transaction of yours as consul?

Answer. No, sir.

Recross-examination by Mr. MAURY:

Question. You have been asked if Mr. Charles B. Dahlgren did not claim to be consul in the State of Durango. Please state whether Mr. Dahlgren ever exercised any consular functions in the State of Durango or elsewhere in Mexico, so far as you know.

Mr. KENNEDY. Question objected to. It is not in the line of the question cited from the direct examination of the witness, for that question simply related to a claim made on the part of Dahlgren, and not as to the fact whether or not Dahlgren was actually consul, a matter in respect to which the records of the State Department would be the best evidence.

Mr. MAURY. Counsel for the United States submits that the question is admissible in view of the question propounded by counsel for La Abra Company.

Answer. Not to my knowledge.

Question. Would you not have known the fact if he had exercised such functions?

Mr. KENNEDY. Objected to on the ground that there was a distance of 200 miles or so separating the two places, and that in any case the question is incompetent, because it calls for a surmise or opinion of the witness.

Answer. I probably should.

The examination by counsel being concluded, the witness, in answer to the final interrogatory by the commissioner, says that nothing further material to the claim, other than he has already stated, occurs to him at the present time.

Signature waived.

[SEAL.]

ROBT. L. MILLER,
United States Commissioner.

Adjourned until Thursday, December 5, 1895, at 2 o'clock p. m.

Deposition of David J. Garth, taken at Washington, D. C., December 4, 1895.

Present, same counsel as aforesaid.

DAVID J. GARTH, a witness produced on behalf of the claimant, being sworn in like manner, testified as follows: That his name is David J. Garth; that he has passed seventy years of age; that he resides in Westchester County, N. Y.; that he is a farmer; that he has no interest, direct

or indirect, in the claim which is the subject of inquiry in said cause otherwise than as a stockholder, creditor, and director of the company, and that his brother, John H. Garth, has an interest as a stockholder, creditor, and director also.

By Mr. KENNEDY:

Question. When did you first become connected with La Abra Company?

Answer. I think in 1865 or 1866.

Question. In what capacity have you served the company?

Answer. I served it as treasurer.

Question. Do you recollect who the first treasurer was?

Answer. Sydnor Shackleford, then of New York. He was residing there temporarily.

Question. Give us your best recollection of the time when you became treasurer; about how long after the organization of the company?

Answer. I do not know; probably six months, immediately after Mr. Shackleford removed back, but I do not remember whether he was there six months, eight months, or a year. But after he went back to Missouri—as to the time I am not certain.

Question. Were you acquainted with a man by the name of De Lagnel?

Answer. Yes, sir.

Question. What connection, if any, had he with the company?

Answer. He was sent as superintendent of the mines, and had charge of them in Mexico, at Tayoltita.

Question. Did you have anything, and if so, what, to do with his employment?

Answer. Yes, sir; Mr. Hearn and myself and other directors engaged Colonel De Lagnel in that capacity.

Question. Is there any circumstance that has impressed itself on your mind in regard to the first letter or one of the earlier letters that you received from Colonel De Lagnel after his arrival in Mexico? If so, please state what it is.

Answer. I was surprised at Colonel De Lagnel's letter informing me of the large indebtedness of the concern, or of the company, or of the works, whatever you might call it, when he took possession of it.

Question. When he went down there, what was your idea as to the state of the company's accounts at the mines?

Answer. I supposed there was no indebtedness. I supposed the means he had there were sufficient to erect works and go on and beneficiate the ore.

Question. If any draft was made on you at or about the time that you received that letter from De Lagnel, please state in what amount it was, and whether or not you paid it.

Answer. I think it was a large draft—for $15,000—and I paid it.

Question. Do you recollect whether that draft was followed by another from him, shortly after the same, for a somewhat similar amount?

Answer. There was; but precisely what difference there was I do not remember—difference in dates. But there came the two drafts.

Question. Two drafts for $15,000 each?

Answer. Yes, sir.

Question. Now, have you any doubt whatever as to receiving such a letter from Colonel De Lagnel at that time?

Answer. None.

Question. Is there any other circumstance that impresses itself on your mind as to any other letter which you received from Colonel De Lagnel early in his administration? And if so, please explain.

Answer. Yes, sir; I did receive a letter from him saying that he had gone to La Puerta and there made an analysis of various ores from the company's mines, and that the results were very good.

Question. Is there anything in the reply that you made to that letter which enables you to speak of it after this great lapse of time with positiveness?

Answer. Yes. That letter was shown to the gentlemen there, and I recollect that we were all very much gratified with the results of the analysis which he had made, and it was talked of among them, and it made an impression upon all of us.

Question. My question was, whether there was anything in the answer which you made to that letter, any caution that you gave to De Lagnel, that impressed the fact on your mind that you did answer that particular letter.

Answer. It was this, I think. We talked about the matter there, and some of them said perhaps that was selected ore, or had been put up or "salted," or something of that sort, and I think in my letter I called his attention chiefly to that point.

Question. You wanted to be sure that you were not led astray?

Answer. Yes, sir; we wanted that to be established as a fact. We wanted to be certain that the ores down there had not been meddled with or salted, or anything of that sort.

Question. What was your habit of writing to Colonel De Lagnel, as to frequency?

Answer. As often as the mails from New York to San Francisco went—I do not remember particularly.

Question. Have you examined the exhibit to the Government's bill in this case, in which eight letters of yours are spread out on the record, Exhibit B, top of page 318? Will you have the goodness to look at these letters and give the dates of them to the commissioner?

Answer. The first letter I see here is dated New York, May 10, 1867. The next is May 20, 1867. The next is May 30, 1867. The next is June 10, 1867. The next is July 10, 1867. The next is July 20, 1867. The next is August 10, 1867. The next is October 10, 1867.

Question. Now, can you state whether these are all of the letters that you wrote to Mr. Exall within that time?

Answer. I think not.

Question. Will you look at a letter from Exall dated at Mazatlan, November 17, 1867, addressed to you, and printed in Exhibit B of the Government's bill, on page 312, and read the first sentence of it?

Answer (reading): "Yours of the 30th of September is just in hand and, contrary to my expectations, contains nothing of an encouraging nature."

Question. Have you any doubt that you wrote a letter of September 30, 1867, to Mr. Exall?

Answer. I have not.

Question. Can you account for the fact that that is not among the eight letters of yours which are spread on this record?

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Answer. I do not know why; I do not know anything about it.

Question. I find on pages 306, 307, and 308 of the same exhibit a letter from Exall to you, dated July 13–14, 1867, in which he says: "The officials are getting daily more troublesome; their demands are all foolish and very unjust, but we have to do the best we can with them, and take things as quietly as possible." Now, I want to ask you whether you remember receiving such a letter from Exall, and whether or not you answered it?

Answer. Yes; I received that letter.

Question. Do you recollect answering it?

Answer. I answered it. I must have answered it.

Question. Now, how long did it take, as a rule, and in a general way, for a letter to reach you in New York from Tayoltita?

Answer. I suppose a month, probably more. In those days the mail came by way of San Francisco and Panama.

Question. Now, on that point I find on page 310 of the same exhibit a letter from Exall to you, dated October 6, 1867, the first sentence of which is as follows: "By this steamer I am in receipt of yours of the 10th and 20th of July and 10th of August." Does that correspond to your idea of the time consumed in the passage and delivery of letters from Tayoltita to New York, and from New York to Tayoltita?

Answer. It seems to me they should have arrived there before. That seems to be a long time, from August to October.

Question. Now, in your letter of August 10 to Exall, which is printed on page 322 of the same exhibit, you say: "I wrote you briefly on the 20th ultimo." That would be July 20. "And since then your favor of the 11th of June from Mazatlan." Now, at that time, the 10th of August, had you received the letter of July 13–14, from which I read an extract?

Answer. I should judge not, from the dates.

Question. If you had received it, you would have acknowledged it?

Answer. Yes, sir.

Question. Now, I ask your attention to the fact that there is no letter of yours among these exhibits between the 10th of August and the 10th of October, and I ask you to say what your recollection is in regard to whether or not you wrote letters between those two dates to Exall?

Answer. I did.

Question. How were the subscriptions to the stock of the company paid—I mean in what kind of money?

Answer. Gold.

Question. Do you remember in a general way at what premium gold was in the latter part of 1865 and in the year 1866?

Answer. It varied very greatly; sometimes varying five or six points in a few days. I suppose there are tables that would give you the exact amount.

Question. Your own recollection as to that is not fresh?

Answer. My own recollection as to that is not fresh, but I suppose there was from 40 to 60 per cent premium; but I don't know. I know it was varying greatly in a day—almost ten points.

Question. So far as you know, what books of La Abra Company were kept in the city of New York?

Answer. They had a letter book.

Question. That is a press copy book?

Answer. A press copy book. They had a list of stockholders, and a stock book you might call it, and a minute book to keep the minutes of the meetings of the directors down in.

Question. Have you mentioned all the books of which you have any recollection kept in the city of New York?

Answer. I have mentioned all the books I know of.

Question. Did you ever see or hear of any other books than the ones you have mentioned as being kept by the company in New York?

Answer. Not that I know of; not to my knowledge—and there was no use for them.

Question. Where were the books of the company, its ledgers, journals, cash books, ore books, and all the books showing its transactions at the mines; where were they kept?

Answer. At Tayoltita, in Mexico.

Question. You were examined, were you not, before the Senate committee in regard to the whereabouts of those books?

Answer. I do not remember; perhaps I was. It is likely, but I have no particular recollection of it now. My examination there was very long.

Question. Did you ever have any transcripts from the books kept at Tayoltita sent to you in New York?

Answer. I did; transcripts of statements from the books I presume.

Question. Were those sent you as frequently as you desired?

Answer. No, sir; they were not.

Question. Have you seen the company's books? I mean the books kept at Tayoltita, within a year or so?

Answer. I have not seen them since I was here examined as a witness before the Senate committee.

Question. You do not understand me. I am speaking now of the books of the company that were kept at Tayoltita, and I ask you whether you have ever seen those books, and if so, when and where?

Answer. I saw the books that were shown to me as the books kept at Tayoltita in this building over here [meaning the Department of Justice], but I do not recollect the exact time.

Question. Was it in the Court of Claims?

Answer. Yes, sir.

Question. When was it that you saw those books; give us some idea; was it last summer—when were you here in Washington last?

Answer. I was here in Washington last spring for a few days.

Question. Was it at that time?

Answer. I do not remember. I can not fix the time at all.

Question. Had you ever seen those Tayoltita books before?

Answer. I had never seen them until they were shown to me here.

Question. From 1865, when this company was organized, until you saw these books in Washington, had you ever seen them or any one of them, or had you ever known from the time that Exall left Tayoltita, where those books were, or in whose custody they were?

Answer. I had no knowledge of that at all.

Question. Will you tell us what Exall said to you in substance, on his return from Tayoltita to New York, as to the reasons why he had left?

Answer. He came into my office unexpectedly to me, and stated that he had been so interfered with by the officers or magistrates that he was unable to conduct business, and that he had himself been imprisoned, and he said to me that he was imprisoned for about two weeks, and that he feared for his life; he was afraid of his being assassinated, or being killed, and he had to leave. That was the substance of his statement to me.

Question. I notice you stated that he came to your office unexpectedly to you. Is it a fact that you had no previous notice that he was coming?

Answer. I had not.

Question. Now, I ask your attention to a letter from Exall to you on page 317 of the same exhibit, under date "Mazatlan, January 24, 1868," and particularly to what I will read from that letter: "By December's steamer, I sent you a telegram from San Francisco. No reply." Did you ever receive a telegram from Mr. Exall during his superintendency at Tayoltita?

Answer. Never.

Question. I read again: "If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco. Will from there telegraph you what further steps shall take." Did you get any telegram from San Francisco in accordance with this alleged notice?

Answer. No.

Question. Did you ever receive this letter of January 24?

Answer. I have no recollection of it.

Question. In this letter Exall says he is being sued by the agents of the Bank of California for the payment. Was there any suit ever brought against Exall or the company to your knowledge, in Mexico, by or for the Bank of California, or did you ever hear of any such suit against the company in Mexico?

Answer. I never heard of it.

Question. Is it not a fact that the draft for $5,000 which you testified, in your examination before the Senate committee, was not paid by you; is it not a fact that that draft was signed by De Lagnel individually and not as an agent of the company?

Answer. It was.

Question. Now, in this same letter Mr. Exall asks you: "What is your intention? Is it to let your interests here go to the dogs?" Did you ever get a letter asking you such a question as that?

Answer. I have no recollection of it.

Question. If you had ever got a letter asking you such a question as that, would you have answered it?

Answer. I certainly would.

Question. What properties had you, or did the company have, at that time down there?

Answer. The company had hacienda, mines, mules, and implements for mining, and a regular stamp mill, with all the necessary fixtures for assaying and getting out the precious metals from the ores.

Question. Now, I want to ask you whether you would not have considered it your duty, as the treasurer of the company, to say nothing in regard to your own interests as a stockholder and as a creditor? Would

you not have considered it your duty, if you had received any such notice as that, to have taken immediate steps to preserve or do what you could in the way of preserving that property from destruction?

Answer. As a director of the company, I should have, no doubt, tried to have seen the president and endeavored to get them together to see what could have been done. I do not know that I, individually, could have done any more than that myself.

Question. If you had received, individually, such a letter as that, would you have considered it your duty to inform your coadjutors in the company?

Answer. Yes, sir.

Question. Do you recollect whether, in the month of February or March, you ever did make any communication of that nature to your associates?

Answer. I do not remember.

Question. How many interviews, if more than one, did you have with Exall after his return from Tayoltita?

Answer. I do not remember; but more than one, doubtless.

Question. Did you ever put Exall into communication with any lawyer on behalf of the company; and if so, what was the name of the lawyer?

Answer. I introduced him to Mr. Robert Rose, of Washington City, whom I met here.

Question. Tell us how you happened to meet Mr. Rose.

Answer. I stopped over in Washington, from Richmond, going to New York. I had business in Richmond, and stopped over here at Willard's Hotel. There I met a friend of mine, and he was in conversation with a gentleman, and he introduced me to him—Judge Rose, I think he called him at that time. When he heard my name he said, "I used to know a gentleman of your name, John Garth, of Virginia." I told him that was my father's name, and he seemed to take some interest in me. In talking it over with him, I understood there was a mixed commission, I think it was called, between Mexico and the United States, organized under a treaty, for the purpose of settling any claims preferred by citizens of the United States and Mexico against the other, and I then mentioned to him the fact that Exall had been expelled from the country and run away, and he thought it was——

Question (interposing). Don't say what he thought. Say what he said.

Answer. He said it was a suitable case to be presented to the commission.

Question. What did he do?

Answer. He accompanied me to New York the next day.

Question. Did he take you to anyone in Washington before you went to New York?

Answer. Yes, sir; I think he took me to see Mr. Hubley Ashton.

Question. What position did he hold?

Answer. I think he held a position as commissioner here. I do not know what position he actually held.

Question. Was he connected with this commission?

Answer. Yes, sir; I think he was the main man.

Question. Did you go with Judge Rose to see Mr. Hubley Ashton?

Answer. Yes, sir.

Question. What did you do? State what you did next.

Answer. After he accompanied me to New York I introduced him to Mr. Exall. I found Mr. Exall and introduced Judge Rose to him, and they had a conversation, I suppose. I was a busy man and left them together and he had a talk with Mr. Exall there.

Question. How long were they together?

Answer. Three or four hours, perhaps.

Question. Did Judge Rose see Mr. Exall after that?

Answer. Yes, sir; he came to New York afterwards on that business, and had a conversation with Mr. Exall.

Question. Is that the same Robert Rose who signed the memorial of La Abra Company, which you will find on page 6 of the complainant's bill, the signature "La Abra Silver Mining Company, by their attorney in fact, Robert Rose." Is that the same man?

Answer. That is the same man.

Question. Now, Mr. Garth, what year, as near as you can recollect, and what time of the year was it when you stopped at Washington on your journey from Richmond to New York and made Judge Rose's acquaintance?

Answer. It was early in the fall of 1869.

Question. Now, do you happen to know whether at that time there was a convention proclaimed between the United States and Mexico for the organization of the commission that you have described?

Answer. A commission had been established or formed, I think.

Question. You think the commission itself had been organized?

Answer. Yes, sir.

Question. And, of course, the treaty under which it was organized must have been previously proclaimed?

Answer. I suppose so.

Question. I do not want you to say what Judge Rose said after his interviews with Exall, but I want you to state what steps were taken, if any, after those interviews to bring the case before the commission. Did you begin to take testimony?

Answer. We did as soon thereafter as was practicable. Steps were begun soon after to raise voluntary contributions from the directors and stockholders to hire somebody to go out to Mexico to take testimony.

Question. You and the other officials and the agents and attorneys of La Abra Company are charged in this bill with deliberate fraud in making this claim before the commission. I want to ask you, on your oath, whether or not you believed what Exall told you as to the reasons why he had left Tayoltita when he reported, as you have stated, at your office on his return?

Answer. I did believe it firmly and acted upon it.

Question. And the action that you took in the prosecution of the claim was based upon your belief in the truth of what Exall had stated to you.

Answer. It was.

Question. Did you know a man by the name of Alfred A. Green?

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Answer. I did not know him well; I was introduced to him in Mexico when I was at Mazatlan or Tayoltita; I met him there.

Question. When you next saw him, state under what circumstances your acquaintance was renewed.

Answer. The next time I saw him was in New York, in my office. I came down there one morning and there was a man sitting down in front and I did not recognize him at all. I did not think I had ever seen the man before. He stood up and told me his name was Green; that he had met me in Mexico. I had entirely forgotten the circumstances of having seen him, because I had met there with a number of Americans in that country in going around, and I was introduced to a great many of them whose names I have forgotten and whom I never expected to see or hear of afterwards. It was that way with Mr. Green. I had no recollection that I had ever heard or known of him before. He called to my mind that he had met me in Mexico and that he was cognizant of the fact that the Mexican commission was considering claims against Mexico by American citizens; that he himself had a claim of that sort.

Question. What did he say, if anything, regarding his knowledge of the circumstances under which Mr. Exall had left Tayoltita?

Mr. MAURY. I object to that, upon the ground that it is pure hearsay.

Mr. KENNEDY. I want to make a statement once for all as to our position on that point, because it is of importance. The complainant in this suit charges deliberate fraud upon the respondents, its officers, agents, and attorneys, and respondents' counsel understands the law to be that when fraud is charged the person against whom the charge is made can show representations upon which he acted, the reason being that it is competent for him to clear himself by showing that he acted in good faith upon certain representations, and the truth or falsity of those representations is entirely immaterial, and hence respondents claim the right to show by this witness what any person said of his own knowledge in regard to the circumstances under which the respondents' property was abandoned.

Mr. MAURY. The complainant's counsel submits that the statement of what somebody else said to Mr. Green does not furnish probable cause or ground for any action of the witness. Green did not propose to state anything of his own knowledge, but simply what Exall told him.

Answer. Green stated to me that he knew all the conditions that existed at Tayoltita, for he lived in that neighborhood and knew all the people and knew all the roads, and that he was a miner there and understood their language and knew the facts; that he knew that Exall had been interfered with and driven off by their officials, and that his life was in danger by remaining there very long.

Question. Do I understand you had no previous communication with Green?

Answer. None whatever.

Question. And that it was entirely of his own accord and very unexpectedly to you that he came to your office?

Answer. I was very greatly surprised.

Question. Will you tell us about what time that was in connection with the interviews between Judge Rose and Exall?

Answer. My recollection of it was it was in December, toward the latter part of 1869.

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Question. Now, to refresh your recollection, I want you to look at the deposition of Alfred A. Green, as printed in Exhibit A of complainant's bill. It is document No. 8, on page 340, and it closes on page 343, and I want you to look at the signature and read the date.

Answer. This deposition is signed by Alf. A. Green. "Subscribed and sworn to before me this 13th day of December, A. D. 1869. George G. Barnard, J. S. C."

Question. How came that deposition to be taken?

Answer. Knowing what Green had said, and believing it to be true, I introduced him to the company's agent, and he volunteered to give this deposition, which was taken in New York.

Question. Who at that time was attending to the matter of evidence in support of the claim?

Answer. A Mr. Adams.

Question. Give his full name, if you can.

Answer. Alonzo Adams, I think.

Question. Was he the man known in the case as General Adams?

Answer. Yes, sir. I think his name was Alonzo, although I am not certain about that; but he was known as General Adams.

Question. Did I understand you to say that you introduced Mr. Green to General Adams?

Answer. I did. General Adams came in probably while I was talking to Green, and I introduced him to Mr. Green. They were together for hours.

Question. Do you know whether Mr. Green had ever seen Adams before that time?

Answer. I know he had not; at least Adams said he had not and Green said he had not. I know they had never met.

Question. Your introduction was their first acquaintance?

Answer. So I believe.

Question. What other attorneys than Judge Rose did the company employ in the prosecution of its claim?

Answer. I do not know that the company ever employed anybody except Britton & Ely. They employed General Adams, and I understand that General Adams was to employ all the attorneys.

Question. Never mind through what agency the company made the employment. What I am trying to obtain from you is information as to the attorneys by name who assisted in prosecuting the company's claim before the commission. I do not care who employed them.

Answer. Mr. Rose and Judge Black, as I understand, and Messrs. Shellabarger & Wilson, and perhaps Mr. Stanton and his partner—I forget his name now.

Question. Who was Judge Black?

Answer. Judge Jere Black, as I understand, of Pennsylvania.

Question. The same Mr. Black who was Secretary of State of the United States and Attorney-General of the United States?

Answer. Yes, sir.

Question. And who was Mr. Stanton?

Answer. Mr. Stanton was a lawyer here in Washington.

Question. Was he the man who was governor of Kansas?

Answer. I do not know that.

Question. And had been a Member of Congress?

Answer. I do not know about that, but the firm was somebody and Stanton, or Stanton and somebody else.

Question. Are you not mistaken in thinking that Shellabarger & Wilson were connected with the case as early as you have stated?

Answer. I think it was later. I may be mistaken about that. I never employed anybody except Judge Rose.

Question. How intimately were you acquainted with George C. Collins, the president of La Abra Company?

Answer. Very intimately.

Question. For how long?

Answer. For twenty-five years, I should suppose.

Question. What kind of a man was he?

Answer. He was one of the noblest men I ever knew in my life.

Question. How as to his integrity—as to his reputation among business men in New York?

Answer. He was a man of great integrity, a vestryman in St. Thomas's Church, and one of the largest tea merchants in New York, and esteemed, I suppose, as a man of great wealth.

Question. And as to his credit?

Answer. None better.

Question. What difference would there be, in your opinion, between his word and his bond?

Answer. None at all.

Question. Did you ever know a man of higher personal character?

Answer. I never knew a better man.

Cross-examination by Mr. MAURY:

Question. You have stated that when Exall appeared before you at your office on his return from Mexico it was unexpected to you?

Answer. Yes, sir.

Question. He gave an account of what had taken place and what had caused him to leave Mexico, I understood you to say?

Answer. Yes, sir.

Question. Was that account a written account?

Answer. No; that statement was not a written statement; it was in a conversation; it was not a written statement, to my recollection.

Question. Have you any doubt about it?

Answer. I have no doubt about it at all.

Question. It was a verbal statement?

Answer. It was a verbal statement, in quite a long conversation about such things. I can give the substance of it as well as I can recollect, although it was very voluminous.

Question. In some of your letters, which are to be found in Exhibit B, and to which I might call your attention, a letter written on the 10th of July, 1867, at page 320—and 321 is the page I read from—next to the third paragraph from the last, you use this language: "Don't run into debt or get into difficulty with the authorities, if there are any such things existing, but at the same time be firm in maintaining your rights and do not submit to imposition, except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the

direction of the law, and our rights will be protected by our Government." Then in a letter to be found on the next page (322), written on the 10th of August, 1867, you say: "From the reports we get in the papers, we find that Americans and all foreigners will not be protected in their persons and rights in that country, and we may have to abandon our property there. If so, you must take all necessary and legal measures by protests and otherwise to secure our claim against the Government." What did you say to Exall on account of his omission to follow those reasonable instructions and directions?

Mr. KENNEDY. Question objected, because it assumes that Exall had not followed those instructions; whereas if Mr. Maury had read the next sentence he would find that Exall was instructed to confer with Mr. Rice, and that it is a matter of record in the case that Mr. Rice employed a distinguished Mexican lawyer by the name of Chavarria to appeal to the governor of Durango and other local authorities for protection to the company.

Answer. I supposed he had followed all instructions and did all he could do; that he had done everything he could do; that he had done nothing for which he should have been persecuted and driven from the country. He represented he was afraid of his life, and came to this country for protection.

Question. Did you ask him why he had not made a protest before some consul or other legal officer?

Answer. I did not; it did not occur to me.

Question. Did you not think it very strange in a matter of that gravity that he should have presented himself before you, as treasurer of the company, with nothing but a verbal statement as to the reasons and grounds of his abandoning the mines of the company to the first comer and first occupant?

Mr. KENNEDY. Question objected to because it assumes, as stated in my previous objection, a state of facts which is flatly contradicted by the record, the record showing that Mr. Exall again and again, through the very highest Mexican legal authorities, appealed for protection.

Answer. He stated to me that he had done everything he could for the protection of the company and its rights, and that he left because he was afraid of his life, and there was no possible chance to prosecute the business there on account of the interference by the officials.

Question. Did you not consider it an important matter for the protection of the company that he should at once, while the facts were fresh in his mind, go before some officer and make a formal protest and declaration of all the facts and particulars of the outrages which had been committed against him as an American citizen?

Answer. I did not; I did not think about it in that way.

Question. Would you not have considered the master of a ship under such circumstances to be grossly and criminally negligent for such an omission?

Mr. KENNEDY. Objected to on the ground that the omission is assumed, whereas the record shows there was no omission.

Answer. I do not know. I am not familiar with shipping matters. I suppose a master of a ship would protest in a case of that sort to secure his insurance, or something of that sort; but I do not know that the cases are similar.

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Question. Are you not a man of business enough to know that in a matter involving hundreds of thousands of dollars, in which a number of individuals were largely interested, that it was your duty, as an officer of the company, to see to it that Exall, who had fled from its property, should, in some simple way, make a protest and declaration of the outrages that had been practiced upon him?

Answer. I do not think it was necessarily my duty. I do not look upon it in that way.

Question. Then, you think as treasurer of that company, you had discharged your full duty to it in allowing this important matter to rest upon the mere verbal statements of a man who might die the next day?

Mr. KENNEDY. Objected to because it assumes that this matter was allowed to rest on the verbal statements of Exall, whereas the fact is that Exall made two sworn depositions, giving in detail the outrages from which he had suffered, and that those depositions were filed with the mixed commission.

Answer. I do not think it was my duty. I think I did everything I could possible in the matter. As soon as the directors who were there at hand, as soon as I could get them together, Mr. Exall made the same statement to them, and no other action was taken by them that I know of.

Question. Nothing else was done?

Answer. Nothing else was done at that time.

Question. How is it you came to say just now if you had gotten a certain letter of Exall you would have taken immediate steps for the protection of the property of the company?

Answer. I should have gone around and laid the matter before the directors and have seen what they would have been willing to subscribe, or do anything else to protect the property, so far as the pecuniary matters were concerned.

Question. What action did you take for the protection of the property after Exall came back and made this statement?

Answer. It did not seem to be necessary to make any further statement. He was driven out of the country, and he was in danger of his life, and it was utterly futile to send or make any attempt to send another man there, who would be probably killed or driven out of the country in the same way. It seems to me that we did everything under the condition of things at the time existing, or believed to be existing, that could be done.

Question. Did you not consider you were entitled to the protection of the Government of the United States?

Answer. I suppose so. We lived under law.

Question. Do you mean to say in this solemn way that these capitalists, interested to this large extent in this property, would have tamely and cravenly submitted to such outrages without breathing them to the Government of the United States?

Answer. They did so.

Question. If they had happened?

Answer. They did so.

Question. When?

Answer. As soon as an opportunity was given to them, I suppose.

Question. An opportunity for an American citizen to claim the protection of his Government? Why, is not the opportunity always open?

Answer. I do not know.

Question. Do you mean to say that any American citizen has not the right? You do not know that an American citizen has the right immediately to fly to his Government for protection against the outrages of a foreign Government?

Answer. I do not know it, and do not know that it is done in every case. I do not know that I should be compelled, or that I would in a case of outrage go to my Government, because it would take years and years to get the matter rectified.

Question. The first opportunity, in your opinion, that occurred was this introduction of Exall to Judge Rose?

Mr. KENNEDY. I object to the question on the ground that the witness testified that as soon as he heard there had been a convention for the organization of a commission to examine and decide such claims, he stopped in Washington on his way back from Richmond to have a consultation and take such steps as he might be advised in the matter.

Question. The first opportunity, then, that you thought the company had was after the convention between Mexico and the United States for the commission; is that it?

Answer. That is my idea. I think that was the first and only opportunity that we had of making our claim and settling the business.

Question. Is it your idea that if the convention of 1868 between Mexico and the United States had not been entered into, that these capitalists in New York would never have brought these outrages to the notice of their Government?

Mr. KENNEDY. Objected to on the ground that this is calling for the opinion of the witness in regard to the action of the capitalists in New York.

Question. Is that your view?

Answer. I do not know what those capitalists in New York would have done or what steps they would have taken. I can not say what steps they would have taken.

Question. What would you have done?

Answer. I do not know what I would have done. I should probably have submitted to the outrages, as I have done many times before.

Question. When Exall made his statement to you and to the trustees or directors of the company, was anything said then about urging the claim before the Government of the United States?

Answer. I did not know at that time that there was any convention.

Question. I am not speaking about a convention.

Answer. What are you speaking about?

Question. Was anything said about making a claim against Mexico through the United States Government?

Answer. Not that I know of.

Question. Would you not know if any such thing had been started?

Answer. I do not know that I should. I had no knowledge of any such thing.

Question. I thought you were present when Exall made his statement to the directors. I thought you went along and took him there?

Answer. I was; and I think there was nothing further done in that way.

Question. I want to know specifically whether that extraordinary thing had occurred—the omission to take any such steps?

Answer. There was none.

Question. So that the first formal and solemn statement of the facts of these outrages was made some time in 1869—the latter part of 1869—in the shape of depositions to be laid before the commission, was it not?

Answer. Any formal action we took here was in the fall of 1869.

Question. Did Exall make any statement before he made his first deposition which was laid before the commission?

Answer. No, sir; no formal statement except as I have detailed to you.

Question. I asked you as to a formal statement?

Answer. No, sir; no formal statement.

Question. No written statement?

Answer. No, sir; not that I know of.

Question. You have spoken about the books which were kept by the company in New York. Are all the books and records of the company in New York in the possession of the company now?

Answer. I have seen nothing of them for years and years. I have had nothing to do with them and have seen nothing of them for years aud years. So far as I know they have been lost.

Question. When did you cease to be treasurer of the company?

Answer. I do not remember, but many years ago.

Question. Can you not form an idea? You have recollected a good many things here to-day, with a good deal of accuracy.

Answer. I suppose I ceased to be treasurer after the return of Exall in 1868 or 1869.

Question. When you saw Judge Rose, were you treasurer of the company?

Answer. No, sir.

Question. Where were the books then?

Mr. KENNEDY. What books do you mean?

Mr. MAURY. The books kept by the company in New York. I have already referred to them.

Answer. I suppose they were in the hands of the secretary. I know nothing to the contrary. I do not know anything about them.

Question. Who was the secretary?

Answer. Mr. William M. Worthington, I think, was secretary at that time.

Question. Where was his office?

Answer. His office was in a room in the same building that ours was, a small room where he kept his books. He was a bachelor and a man of considerable means, and he rented that room.

Question. What relation did that room bear to your room; did it adjoin it?

Answer. Yes, sir; there was a partition between; a room on the other side, probably 10 or 15 feet square.

Question. And a door?

Answer. And a door went out from mine into the hall and from that into the street. There was no door between Mr. Worthington's office

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and my office. You had to go out of my office into the hall in order to get to Mr. Worthington's room.

Question. Mr. Worthington, at the time of your conversation with Judge Rose, was secretary, was he not?

Answer. I think so.

Question. Was there any call for or inquiry for the papers, letters, and documents of the company in connection with the case—in the preparation of the case—to be used before the mixed commission by the company's attorneys?

Answer. I do not know. The books were in the possession of the secretary, and I suppose they were accessible to anyone who wanted to see what books they were. There was a record book and a letter book, you might call it a minute book, and a letter-press copy book, and the little stock book which you now have.

Question. Were there not letters and documents and reports, and so on, from the mines?

Answer. They were there, no doubt, with the other papers.

Question. Do you mean to say they were not called for to your knowledge?

Answer. I do not remember it; they might have been.

Question. Is it possible that they could have been without your knowing it?

Answer. I suppose so. I do not know why it should not be.

Question. You seemed to have been interested in the preparation of this case for the commission, were you not?

Mr. KENNEDY. The objection to that is, first, that it is arguing with the witness; and second, that it assumes that the treasurer, rather than the secretary, or some other officer of the company, would be the person to whom the attorneys of the company should apply for such documents as they might wish to examine.

Answer. I was not interested. I took no active part in the preparation of this case before the commission. I do not recollect of any papers called for by the attorneys that had the case. I do not know but what they did, but I had no personal knowledge of it.

Question. Who was the channel of communication between the company and the mines and their superintendents?

Answer. The letters were written by me generally after talking with Mr. Collins, and a few of the other directors, when it was convenient to find them.

Question. You, then, were the person by whom all the correspondence was conducted?

Answer. I think so; that is, all the official correspondence.

Question. I am speaking of the official correspondence.

Answer. I think so; as far as I know.

Question. And all the financial matters were attended to by you, were they not?

Answer. There were very little financial matters to attend to, except I put my hand in my pocket and paid the drafts that came along.

Question. The current was all in one direction, from the company to the mines?

Answer. That was the case; that is, from New York to the mines.

Question. There was no return current from the mines to the company?

Answer. None, except a little piece of bullion silver that came from there. I think it brought about $300.

Question. But still you provided for the drafts and expenses, did you not?

Answer. I did, as long as there was any money in the treasury, and when there was no money in the treasury, a few of us just paid the drafts that came on.

Question. After you had exhausted all the capital, then you put your hands in your own pockets?

Answer. Yes, sir.

Question. To what amount did you advance?

Answer. I do not remember now; at least $20,000 to $25,000.

Question. That is but part of the money advanced?

Answer. Yes, sir; but others have advanced more than I have.

Question. What was the aggregate sum advanced?

Answer. I do not know how much; it has been a long time; probably twenty-five years.

Question. Was it as much as $40,000?

Answer. Yes, sir.

Question. Seventy thousand dollars?

Answer. I do not know.

Question. It might have been as much as $80,000?

Answer. I do not know.

Mr. KENNEDY. Objected to, as the evidence in regard to the amount of expenditures is part of the complainant's bill and has been testified to specifically by various witnesses, including the president of the company, George C. Collins, whose deposition is printed as part of the Government's bill.

Question. That being so, it was not so extraordinary after all, my supposing that the persons who were getting up this case for the commission would come to you to know something about the evidence?

Answer. They did not talk to me about evidence. They came to me to ask contributions for the purpose of getting up the testimony. I had nothing to do with the getting up of the evidence further than that.

Question. This case was begun by a conversation between you and Judge Rose?

Answer. That is the truth.

Question. You have been exclusively charged with the business of the company at its New York office, have you not?

Answer. No further than payment of the drafts as they came along, as far as money went.

Question. If any instructions were to be given to the superintendents, or any directions were to be given to the superintendents, or any information was desired from the superintendents at the mines, did you not ask for it or give it?

Answer. I think it was given by me.

Question. Have you any doubt about it?

Answer. I have no doubt about it.

Question. Did you not carry on all the correspondence?

Answer. All the official correspondence, I think I did.

Question. Had you not a fuller acquaintance with the business of the company and the condition of things at the mines than anybody connected with it?

Answer. I do not think I had. There was the president and the secretary and some directors that were equally at hand and who knew about as much about the affairs as I did.

Question. Did they write?

Answer. I do not know that they did, but they told me what to say and how to act.

Question. But that was all conversation and talk preliminary to your formal business act. was it not?

Answer. I suppose so; it must have been.

Question. So that I understand you to say that you were not aware of any inquiry having been made for a book or a paper or a report or a record or a letter in the possession of the company in the preparation of this case before the mixed commission?

Answer. I have no knowledge of it. The attorney had the whole matter in his hands and conducted it without any interference of mine.

Question. How did General Adams happen to be in your office that day when he met Green there?

Answer. He came there with a letter from General Bartholow, of St. Louis. He came there with a letter of introduction from General Bartholow a short time before, in which he said he had employed General Adams to go out there and take the testimony, and General Adams produced the letter. I had never seen or heard of the man before, and we had to act in conjunction with the Western stockholders, who were more numerous than those from the East, and obtain their cooperation. It was supposed they would not be capable of raising sufficient funds to employ the lawyer or party, whoever went there, to take the testimony, and expenses of it.

Question. Did Bartholow employ Adams to take testimony without any communication from you or the company in New York?

Answer. He did, and to my surprise. I was very much surprised, because I had intended when I talked with them of sending another party.

Question. Did the matter stand on Bartholow's appointment, or was there a contract between the company and Adams?

Answer. There was a contract between the company and Adams which must be of record here, of course.

Question. Where was Bartholow at the time this thing took place?

Answer. He was in St. Louis. He was in a bank out there. He had a banking establishment there. He was at the head of that banking establishment.

Question. Did he explain how he came to appoint Adams without consulting with the company?

Answer. He thought he was a good man and had agreed to employ him.

Question. Then this matter did not originate with you; it seemed to occur to Bartholow also to prosecute this claim?

Answer. If I was to go back to the first history of it, I could probably be able to state it better. I did not know it was necessary. I

never knew of the commission until the commission was in existence. Until General Bartholow called my attention to it I never knew of the commission at all—did not know there was such a thing in existence.

Question. How did General Bartholow come to call your attention to it?

Answer. I don't know. I suppose he had seen it published in the papers. I had not seen it.

Question. How long before your interview with Judge Rose?

Answer. That was before my interview with Judge Rose.

Question. Before your interview with Judge Rose, Bartholow called your attention to it?

Answer. Yes, sir.

Question. By letter or in person?

Answer. By letter, because he was not in New York.

Question. Have you got that letter?

Answer. I have not. It was a personal letter, and among other things it is gone. I did not keep it, for it has been a great many years ago.

Question. You and Bartholow went down to the mines together?

Answer. We did.

Question. Had you been engaged as a mining engineer?

Answer. Never.

Question. What was your occupation?

Answer. I was at that time engaged in the manufacture of tobacco, from 1860 or 1865, and many years before that. The partnership expired in 1865. It was the tobacco business.

Question. Then what were you doing? Had you gone into any other business? Were you engaged in the banking business ever?

Answer. After we went to California and Mexico I engaged in the banking business.

Question. General Bartholow, at the time he accompanied you to Mexico, what was his business?

Answer. I don't know precisely. I think he was probably in the banking business, or something, in St. Louis.

Question. He was not a mining engineer?

Answer. No, sir; he was not a mining engineer.

Question. Had he any knowledge of mining at all?

Answer. Not that I know of.

Question. Had you?

Answer. None, except what I read. I had no practical knowledge.

Question. By whom were you sent down there?

Answer. A number of gentlemen, who wished us to go down there with Mr. Hardy. He came to New York with his specimens.

Question. From where?

Answer. From Mexico.

Questions. Specimens of what?

Answer. Ores, etc.

Question. Was he trying to sell mining property of his own, or as agent for somebody else, or how was it?

Answer. He claimed to own the property down there and wanted to get up a company to work it. That was the way the thing started.

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Question. And he showed you specimens of the ore it yielded?

Answer. That is what he said.

Question. Was it the crude ore or rock?

Answer. It was mineral stone—just the silver ore. Then he had assays made.

Question. Did he go along with you?

Answer. Yes, sir.

Question. Who else went with you?

Answer. A man by the name of Griffith.

Question. Who was he?

Answer. He was a stranger to me who was mining in California and knew all about gold and silver, so he said. He was in the mining business for many years.

Question. Was he trying to sell?

Answer. No, sir; he went along as a sort of expert, I suppose.

Question. You say, "as a sort of expert, I suppose."

Answer. Yes, sir.

Question. Was he a friend of Hardy's?

Answer. I do not know that I had ever seen Mr. Hardy before we met him in New York.

Question. Was Griffith employed as an expert?

Answer. No, sir; he went with us.

Question. How did he happen to go?

Answer. I suppose he wanted to go. He took stock in the company to the amount of $5,000 or $6,000, I suppose.

Question. After the company was formed?

Answer. Yes, sir.

Question. The company was not then formed, was it?

Answer. No, sir.

Question. How did you get acquainted with Griffith, through Hardy?

Answer. I got acquainted with Mr. Hardy through my relative, Dabney C. Garth, of Missouri, who was an acquaintance of Hardy and knew him very well. I think they lived in the same town. This Hardy came to Dabney C. Garth, who was a relative of mine.

Question. Did these gentlemen in New York send you and General Bartholow down to Mexico to explore?

Answer. That was about the arrangement, to see whether these things were so or not. No expenses were paid by them. Everybody paid his own expenses.

Mr. KENNEDY. I would like to enter an objection to the whole course of this examination, on the ground that it is entirely immaterial, the question in this action and the only question being whether this company, by the fraud of its agents, officers, or attorneys, obtained the award which is the subject-matter of the litigation. That is the only question in this case under the act of Congress.

Question. Did the company defray your expenses after your return?

Mr. KENNEDY. Objected to on the ground that it is entirely immaterial.

Answer. I do not remember distinctly about that, whether they did or not. After the company was formed it may have paid my expenses, but I have no distinct recollection of it.

Question. How long were you in Tayoltita and the neighborhood there?

Answer. I must have been there about three weeks, something of that sort.

Question. Did you go by way of Mazatlan, and across the mountains?

Answer. Yes, sir.

Question. How did you find the country—what was the condition of the country? Was it in a state of peace or war?

Answer. I suppose the country was in a war at that time, but we saw nothing of it of any consequence, not in that part of the country. I do not think there were any troops there. I do not think that I saw any troops of the Government.

Question. You did not see any exhibitions of violence?

Answer. We went from Mazatlan to Tayoltita on mules, with guides. We were not disturbed by any war.

Question. Was there any war going on there?

Answer. I understand there was a contest between Maximilian and the Juarez Mexicans, or whoever was there—I don't know now. But in that part of the country you saw very little of it. I do not remember whether General Juarez was president or not. It was the Mexican authorities against Maximilian—I think about the end of the invasion, you would call it, of Maximilian.

Question. So that everything was peaceable and orderly, was it?

Answer. I think in that part of the country where I visited there was little disturbance—at least while I was there.

Question. What did you do during the three weeks you were there?

Answer. We explored these mountains and mines and went down into them.

Question. Did you know anything more when you got down into them than you did before?

Answer. Not much. Griffith was there, and he claimed to know good ore; and Weidner was there and he claimed to know.

Question. Whom did he represent—Del Valle?

Answer. I don't know whether he did or not. He was in that neighborhood.

Question. There was plenty of people there to show you rich ores, were there not?

Answer. Plenty of them.

Question. So that it seemed to be a very rich country in silver, from the specimens?

Answer. I think so.

Question. Did you come to any terms with Mr. Hardy? Did you buy any of his property there?

Answer. We did, conditionally.

Question. What do you mean by conditionally?

Answer. A company was to be formed in New York to operate the mines and was to take Hardy's and Lewis's interests in La Abra mines.

Question. So that Hardy did not pay any money for his stock?

Answer. He was issued stock for his interest—$22,000 in the mines, my recollection is.

Question. You bought some other mines there, did you not, besides La Abra?

Answer. Yes, sir.

Question. How many did you buy?

Answer. I do not remember, but a number. I think they are of record here, but my memory does not serve me now.

Question. El Cristo was one of them.

Answer. Yes, sir.

Question. Who did you buy that from?

Answer. From Juan Castillo del Valle.

Question. What did you pay Del Valle for his mines?

Answer. We paid him $50,000 in gold.

Question. What sort of tests did you base your judgment on, you and Mr. Bartholow, as to the value of those mines?

Answer. We had some of the ores that were beneficiated there.

Question. Did Del Valle have a great exhibition of silver there as the product of his mine?

Answer. A great deal of it.

Question. Give us an idea how much you saw.

Answer. It was what they call, I think, 150 pounds to a pig—something like pig lead, only it is broader and two make a carga—that is 300 pounds, as I understood it out there. It is in 150-pound silver pigs, as I call them. I should judge there were 10 or 15 or 20 tons, perhaps, judging by what somebody said.

Question. What sort of place was it kept in?

Answer. In his storeroom. He had a stone warehouse and a store there surrounded by a wall.

Question. He did not live there, did he?

Answer. Yes, sir.

Question. Did he not live in Tayoltita?

Answer. That was in Tayoltita. The whole thing I am talking about was in Tayoltita.

Question. My question is whether his residence was at his warehouse where he had all this silver?

Answer. His dwelling when I was there—I suppose when he had no company there he put us in his office in the same building or room, which is twice or three times as big as this room. Then the warehouse had the silver in it and other goods and dry goods, and he stayed in a little house near by. He had a general store there.

Question. It was an ordinary storehouse?

Answer. Yes, sir.

Question. Was it upon your judgment, then, that this enterprise was gone into?

Answer. I suppose it was, in a great degree.

Question. Did you and General Bartholow make a written report?

Answer. I think so.

Question. Where did you make the acquaintance of Mr. Exall?

Answer. It was in New York.

Question. How long had you known him when he was taken into the service of the company?

Answer. Not long. I had a young man in my employ by the name of Colquitt, who was a chum of Exall's; they had been educated together in Richmond; and Colquitt wrote for Exall to come on to New York, and introduced him. He thought he would be a suitable man.

Question. To do what?

Answer. To go out and aid De Lagnel, who wanted somebody to assist him—an American whom he could rely upon. He stayed in New York about a week or two before he was employed and saw some of the directors, and finally agreed to go.

Question. What did you send him as?

Answer. As an aid to De Lagnel.

Question. Assistant superintendent?

Answer. I don't know about assistant superintendent, but just to help De Lagnel as a clerk or assistant, whatever he needed him to do.

Question. What was his qualification as a metallurgist?

Answer. I don't know that he had any. He did not go as a miner or as a metallurgist. He just went to aid De Lagnel as an accountant or as an attendant in the store for goods to be sold and bought.

Question. Did it not occur to you as a little risky to have a man so unqualified succeed De Lagnel in the charge of an important enterprise like that?

Answer. Yes, sir; it did.

Question. Did it not look like inviting disaster?

Answer. I do not know that it did, but if a suitable man could be found—a miner or experienced mill man, or a man qualified to fill the superintendency of the mine—we intended to get him. But it was never done.

Question. You just let it go along in the same old way?

Answer. Yes, sir.

Question. Yet you were writing to Exall that you were disappointed and discouraged at his unfavorable reports?

Answer. I did.

Question. Admonishing him not to waste his time over worthless ores?

Answer. Yes; I wrote to Exall to be careful and economical.

Question. I think you said in your examination before the Senate committee that you thought things would have gone much better if somebody had been in charge of that enterprise who knew something about it, did you not?

Answer. I think so still.

Question. I thought I recollected something to that effect.

Answer. And I think so still.

Question. I suppose De Lagnel was thoroughly incompetent for that work, was he not, as a miner?

Answer. As a miner, perhaps he was. He was an able man, I was always told. He got so that he could make assays, and, I suppose, very correctly. I always took De Lagnel to be a good man.

Question. But he went down there to school rather than to take charge of a mine, did he not?

Mr. KENNEDY. The objection to that and all those questions is that they assume a certain state of facts instead of asking the witness for information. It is in the record that De Lagnel, before he went to the mines, took lessons in assaying. Another objection is, and it is a more serious one, that the whole line of questioning seems to be wide of the issue in this case, which is fraud or no fraud on the part of the company.

Question. I believe, Mr. Garth, in one of your letters, which it would be hardly worth while to exhibit to you, because you will recollect it per-

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fectly well, and so will Mr. Kennedy—in one of your letters you speak of your great disappointment at the account that De Lagnel brought back with him when he returned from the mines, do you not?

Answer. Yes, sir; I think so.

Question. Considering now the utter want of experience of De Lagnel and of Exall, upon what were your hopes based of the success of that enterprise?

Mr. KENNEDY. Objected to because it assumes that the company had no person at the mines in charge of the work of reduction other than De Lagnel and Exall; whereas the fact in the case is that there was a miner by the name of Elder who had charge of the mill, and who was examined as a witness on the part of the Mexican Government in the Congressional investigation.

Answer. I suppose we knew there were people there who claimed to be competent to run the mill and to attend to the mechanical part of the business. De Lagnel was mainly there as our representative and to take charge of the whole interest of the concern.

Question. Then what do you mean by saying just now that you thought the result would have been very different if the enterprise had been in the hands of people who understood something about it?

Answer. I mean this: Sometimes very rich ores, I read in the books, may be run through a mill and be beneficiated through a mill and be lost in the process, and very poor results will be found; whereas if they have been subjected to another process—for instance, where ores were rebellious, if they were put through fire and beneficiated the result would have been widely different.

Question. If it did not make so much difference whether De Lagnel or Exall were competent to superintend this work, provided their subordinates knew something about it, why did you say before the Senate committee and repeat here that if this enterprise had been in the hands of competent people it would have turned out differently?

Answer. I said so because I thought they would learn the business and learn the nature of the ore and give good results from it.

Question. What difference did it make if you depended upon these subordinates?

Answer. I do not know; I can not answer it.

Question. As I understand it, when you were examined before the Senate committee, and at the close or near the close of your examination, you admitted that you had received all the letters that were addressed to you and that appeared in that letter-press copy book.

Mr. KENNEDY. Objected to because it assumes a fact when the contrary is the case.

At this point the further taking of this deposition was adjourned until half past 9 o'clock a. m., December 6, 1895, at the same place.

Cross-examination of David J. Garth resumed 9.30 a. m., December 6, 1895.

By Mr. MAURY:

Question. I omitted to ask you yesterday if you had been requested to testify before the commission?

Answer. Never.

Question. Did you offer to testify before the commission?

Answer. I never did.

Question. When Mr. Exall made his statement to the directors of the company, was anything said about making application to the Government of Mexico for redress?

Answer. Nothing that I know of. I heard nothing of it.

Question. Was anything said by the president and directors about sending an agent down there to look into the condition of things?

Answer. Nothing that I heard of.

Question. Would you not have heard of it if any such suggestion had been made?

Answer. I think so.

Question. Did Exall say whether he left the property in anybody's charge?

Answer. I do not think he did; I don't remember of it. He said he abandoned it and came away.

Question. Do you think there could be any doubt in your mind about it? If he had said so, would you not be likely to remember that?

Answer. I would have, if he had said anything to me about it.

Question. So the impression that he conveyed to the company was that he had clean abandoned the whole thing?

Answer. That was my understanding.

Question. Did he say anything about Mr. Granger?

Answer. I do not recollect if he did.

Question. Did he not say anything about having left Granger in possession?

Answer. I think not.

Question. So that your understanding was that this valuable machinery and all the movable effects, as well as the mines belonging to the company, were just left open to the first occupant?

Answer. I think so.

Question. And nothing was said about sending anybody down there to look after it?

Answer. Nothing that I know.

Question. Have you any idea what induced that resolution to let the whole thing go by the board?

Answer. I suppose the idea was that it was useless to send a person down there to be killed or run off; that it was impracticable to do it at the time.

Question. What was the idea of abandoning the thing completely, just as you would anything you threw into the highway? What was the idea of abandoning the thing completely and giving it up?

Answer. The idea was that it was useless to make any further attempts to work the property down there, to develop the property down there—it was impracticable.

Question. Did you suppose that anything that was being done down there could rob you of the right of property in those rich mines, as you call them?

Answer. I supposed they would be left there, and whoever chose to take them would take them.

Question. Anybody could go and denounce them?

Answer. I don't know the law in respect to that. There are certain times when they can be denounced and certain times when they can not.

Question. Did it occur to you or the directors that the Government of the United States was behind you and would not permit you to be robbed of those valuable silver mines?

Answer. It did not then. I would not know how to proceed about it. It was simply we were driven out for the time being and could not do anything. The time might come when, under different conditions of things, we might endeavor to carry on the business there again. But at that time we felt it would be impracticable and impossible to do so.

Question. Did it not occur to you that if the facts which you knew and which you say Exall told you were known to the people of the United States it would set the whole country in a flame?

Answer. No, sir; I do not believe it now.

Question. You think it would not have made any public stir that an American citizen had been set upon and driven out of the country and compelled to leave valuable machinery and property belonging to a great corporation having its home and place of business in New York City?

Answer. I do not think it would make a grand hurrah in the country at all. It would be noticed in the papers for a week, probably, and then be dropped.

Question. There was an interval of more than a year, I believe, between the time Exall returned to New York and the time the company filed its memorial before the commission, was there not?

Answer. I think there was a considerable time, but how many months or how long I do not exactly remember.

Question. When Exall came back, early in 1868, it must have been in the spring?

Answer. I think it was in the spring, May or June.

Question. In all that time did the company take any steps to have inquiry made as to the condition of things in Mexico?

Answer. Not to my knowledge.

Question. Or to bring the subject to the attention of the Mexican Government or the United States Government?

Answer. Not to my knowledge.

Question. So that the first action of that sort that was had was when the memorial was filed, or when the letter was addressed to Secretary Fish, which was a short time before the memorial was filed?

Answer. I do not remember the exact dates, but it was some time in the early fall of 1869 that I had this interview with Judge Rose, of which I spoke.

Question. Did you suppose that the Mexican Government would be permitted to seize those mines on the ground of nonuser, after driving the agents of the company from them?

Answer. I thought nothing about it.

Question. Then that enables me to understand more completely your language in the course of your examination before the Senate committee, where you say (p. 844): "Q. Could you have presented a claim to the

Mexican Government if there had been no commission organized?—A. I suppose so." Then you were asked this question: "Q. You had no idea of doing that?—A. I had no idea of doing it. The thing just dropped dead. I had something else to attend to. The cow was dry and I was going to hunt a fresh one." That expresses the idea, does it?

Answer. I suppose so.

Question. As I understand you, there was no secret made about this being a dead failure and that the jig was up, was there?

Mr. KENNEDY. Objected to on the ground that this witness is testifying only as to what he himself did or thought at the time, and that he is not speaking for the company or the whole claim.

Question. I ask you, then, this question: Does what I have just read you from your examination before the Senate committee express the idea which the company had of this thing?

Answer. That expresses my idea.

Question. What was the company's idea?

Mr. KENNEDY. I object to that, because the witness can speak only for himself in respect to ideas or intentions.

Answer. I can not tell.

Question. You say your idea was that the cow was dry and you would go and get a fresh one?

Answer. Yes, sir.

Question. Did the company have the same idea?

Answer. I do not know what the idea of the company was. My connection with it was dropped very quickly and I have had nothing to do with it for many years.

Question. Did you hear no expression or view by the president and directors of the company when they were in session with this matter before them?

Answer. We had very few sessions, and oftentimes I did not attend and did not know anything about it.

Question. What was the result of these sessions; did they determine that they would do anything, or would they just give it up?

Answer. So far as I know there was no determination to do anything further at that time.

Question. This matter, then, was no secret of the condition of things in Mexico?

Answer. I do not suppose it was, so far as I know.

Question. Did it get into the newspapers, this account of Exall's treatment in Mexico?

Answer. I do not remember.

Question. You do not remember having seen it in the newspapers?

Answer. It may have been, but I do not know.

Question. You did not see it?

Answer. I did not see it.

Question. How did the mails get to Tayoltita; by what route did they go?

Answer. From New York to Panama, and thence to San Francisco, and thence by steamer to Mazatlan, and thence by mule, I suppose, or mozo to Tayoltita. Probably the superintendent himself oftentimes came down to meet the mails.

Question. All the instructions that you sent to the mines were received there, were they not?

Mr. KENNEDY. Objected to, on the ground that he can not possibly tell that.

Answer. I do not know. I was not there to see.

Question. Do you mean to say the receipt of them was not acknowledged?

Answer. Some of them were acknowledged, I see in that book, but all of my letters were not acknowledged, certainly.

Question. Do you recollect any letter you sent there not being acknowledged which required an answer?

Answer. I do not recall it.

Question. So that, so far as your recollection serves you, you never wrote a letter to the mines that required an answer which was not answered?

Answer. I requested in some of my letters monthly statements to be sent, and that was not complied with.

Question. You mean to say they were not punctually sent?

Answer. They were not regularly sent.

Question. But they were sent?

Answer. Some of them were. Some abstracts from the books I suppose were sent.

Question. I mean to say, when you wrote a letter asking for any specific information or calling for an answer, you have no recollection that you did not receive a response to that letter, have you?

Answer. I do not recall any now.

Question. With reference to the books which were in the office in New York, was there not a book containing some abstracts of the books showing the state of business at the mines—abstracts taken from those books?

Answer. I do not know anything about that; not that I know of. I never heard of it.

Question. Would you not be obliged to know it, being the organ of communication with the mines?

Answer. There were none that I know of, as I said before.

Question. Could it be the case that the office of the company did not contain any record of the condition of the business of the mines?

Answer. It is exactly so that it did not, that I know of.

Question. Would you not have known it?

Answer. I would have known it probably, but to my knowledge I know nothing of it. There was no business done in New York, in fact and in truth. What I want to explain is, the only thing was that I was treasurer there, and when the drafts came I paid them, and they were handed over to the secretary, I suppose, and every draft that came I paid it and it was charged on the firm's books to La Abra Company. When there was no money in the treasury the directors, including Mr. Collins and myself and some others, advanced the money to the company, and that was charged to the company. When I paid a draft it was charged to La Abra Company on the books of my firm. When Mr. Collins paid a draft I had no knowledge of that. I suppose he charged it on his book to La Abra Company.

Question. When De Lagnel's draft for $5,000, held by the bank in California, went to protest, the company was, in fact, bankrupt, was it not?

Answer. The company had no means then except as we furnished it.

Question. Had not all the capital subscribed by the stockholders been exhausted?

Answer. So far as I know, it had.

Question. Would you not know if it had not?

Answer. I think so. I think all the subscriptions were paid, so far as I know.

Question. In addition to that, the company was saddled with a large debt of over $70,000, as you said yesterday. It might be for money advanced to take up these drafts drawn from the mines of the company. Is that so?

Answer. That is true, so far as I know.

Question. So that the cow was literally dry?

Answer. Yes.

Question. You stated yesterday that you have no recollection of receiving a telegram from Exall from San Francisco?

Answer. I do not recall any.

Question. You do not swear you did not receive it?

Answer. To the best of my knowledge and belief, I never received it.

Question. In respect of the letter of January 24, 1868, from Exall to you, in which Exall states that he is doing nothing whatever at the mines and can not until he receives money to operate with, and says, "I haven't means to protest now, and they are liable to be denounced at any moment." And further on, "What is your intention? Is it to let your interest here go to the dogs?" I do not understand you to say you did not receive that letter?

Mr. KENNEDY. Objected to on the ground that the witness has testified again and again that he has no recollection of having received the letter.

Question. You said you had no recollection, did you not?

Answer. I said I had no recollection of having received that letter, and no knowledge or belief that I did.

Question. I do not understand you to deny that you received that letter?

Answer. I can not deny any further than that. I have no recollection of it, and do not believe I did receive that letter.

Question. In your examination before the Senate committee you were asked this question (p. 861): "Q. Do you remember having received any letter after the 10th of October?—A. I do not." Then you were asked this question: "Q. Was there any action or conclusion that the company reached, after the 10th of October, different from anything you have stated from your former letters to Exall which you communicated to him.—A. I do not think there was any formal meeting of the directors oftentimes for months and months, and the thing was in a most loose"—— Then the chairman asks you this question: "Do you remember after the 10th of October any change of policy different from that that you have mentioned in your letters of that date and preceding that date on the part of the company, and that you communicated it to

Exall?—A. I do not. Q. You do not?—A. No, sir." Is that in accordance with your present recollection?

Answer. It is, with the exception that it was my practice to write by every mail to the superintendent at Tayoltita. I do not recollect of any particular letter, but I think it is probable that I did write by the mails as usual, but I have no distinct recollection of it at this distance of time. I think it is likely—I think it is probable that I did.

Question. Now, you are asked this question; whether the letter of October 10, was not the last word of the company and whether there was not anything you could write to him beyond what you had written?—"I don't know; I don't know whether it was the last or not; I don't remember."

Answer. I can repeat that I don't remember. I don't know. I think I did.

Question. Do you think it likely that you could have written another letter involving a change of the policy of the company with reference to the enterprise?

Mr. KENNEDY. I object to that as in the highest degree improper, because it assumes that the treasurer of the company would cease corresponding with the agent at Tayoltita simply because the company had adopted a certain policy and had not changed it; whereas there might be a hundred reasons other than any particular policy of the company for the treasurer writing to the superintendent.

Mr. MAURY. There is no such inconsistency or impropriety as is attributed to counsel for the Government in his judgment.

Answer. I do not know.

Question. Do you carry in your memory the amount of the money awarded against Mexico—the amount that has been paid to La Abra Company?

Answer. I do not.

Question. Have you any idea of the amount?

Answer. Very vague.

Question. Do you think it is much as $300,000 that has been paid under the award?

Answer. I do not know.

Question. Have you any idea?

Answer. It would be a guess.

Question. What is your guess?

Answer. I think perhaps $200,000, may be more and may be less; I don't remember anything about it.

Question. Has the company received any of that?

Answer. I suppose the company has.

Question. Have the stockholders received any? Are you not a stockholder in the company?

Answer. I am; they have received not one cent to my knowledge.

Question. How much stock have you in that company?

Answer. Sixteen thousand dollars now.

Question. And you have not received a penny of the money paid by the State Department?

Answer. Not one penny, except I have received a part of the contributions that were made to take this testimony in Mexico. That was a

voluntary contribution by me. It has been partially returned to me, but not a penny of my advances as a stockholder or as a creditor has ever been paid to me.

Question. The money you received, was it not the money you advanced along with others to pay General Adams his expenses and other people's expenses for collecting testimony in Mexico?

Answer. That is true.

Question. Have the judgment creditors received any money?

Answer. I don't know.

Question. Are you not one of the judgment creditors?

Answer. I told you as a creditor I had never received a penny.

Question. As a stockholder neither?

Answer. Nor as a stockholder. I tried to make that clear.

Question. Have any of the other judgment creditors received any.

Mr. KENNEDY. Objected to on the ground that it assumes that there are judgment creditors and that this witness is one of these judgment creditors.

Answer. Not to my knowledge.

Question. Do you recollect the amount of that judgment.

Answer. I do not.

Question. In your examination before the Senate committee the following took place: "Mr. Foster. I want to ask you whether there were any letters between the letter written by De Lagnel July 6, 1866—— Mr. Kennedy? What page is that? Mr. Foster. Page 269; and the letter of Exall of August 5, 1867 (p. 308); any letter in the letter book as printed? Mr. Kennedy. The witness will have to look at all these letters. The witness. I know, but I had no time to do it. Shall I look over all these letters? Chairman. Yes; so as to answer the question. Q. You understand the question?—A. Let me see if I do. Q. From either De Lagnell or Exall that you did not receive.—A. That I did not receive? Q. Yes.—A. So that I can answer fully. Q. Are you answering? Do you want this taken down?—A. No; better not take it down. * * * Mr. Kennedy. Put down on the record that the witness has stated 'I admit the receipt of those letters.' That is definite. Mr. Foster. That is not an answer to the question. I asked him if there is any letter there that he has not received. He says, 'I admit the receipt of those letters.' That is not an answer to the question. Mr. Kennedy. It certainly is. The chairman. Go on, General Foster. Mr. Foster. I am through." Does that accord with your recollection now?

Answer. Yes.

Redirect examination by Mr. KENNEDY:

Question. You have been asked what your ideas were and what the ideas of the directors of La Abra Company were in regard to taking steps to protect the property that Exall had abandoned. Had you any idea at that time that anybody would be willing to go down to Mexico, assuming that what Exall had told you was true, and try to protect your property?

Answer. Certainly not.

Question. You have been asked how it was that you were so indifferent to your interests down there, and how it was that you took no steps other

than you did take to protect your interests. Will you state what other business you had at the time, and give us an idea of what its extent was by the day?

Answer. I was a very busy man at the time and doing a large business—banking and brokerage business. The daily transactions amounted, I think, to between six and seven hundred thousand dollars, and I was very busy with matters I considered of vastly more importance.

Question. State whether as a banker and broker you were accustomed to take losses, and charge them off, or to keep trying to milk the old cow.

Mr. MAURY. I object to the question upon the ground that it puts into the witness' mouth the very thing that counsel desires to elicit as testimony.

Answer. We took the losses and charged them off as a common thing.

Question. Of how much pecuniary moment was it, in your opinion, to the other directors and stockholders of La Abra Company whether they saved or lost what they had invested in the company?

Answer. Most of them were very rich men, and it made very little to them.

Question. Would you have considered that you could afford the time to institute a complaint against Mexico in the Department of State, before there was any immediate or early opportunity of obtaining a hearing, in a form that could render judgment and settle the claim?

Mr. MAURY. Counsel for the Government respectfully asks to know whether the learned counsel for the defendant is on the witness stand or Mr. Garth?

Answer. I could not have afforded to consider the matter.

Question. Do you know whether Bartholow or any other of the Western directors or stockholders of the company had taken any steps, after Exall's return and before General Bartholow wrote to you, to look after their interests in Mexico?

Answer. Not that I know of.

Question. How long was it before you met Judge Rose in Washington that you had heard of this business from General Bartholow?

Answer. Two or three weeks, probably.

Question. You did not preserve that letter?

Answer. I did not.

Question. Have you been in the habit of keeping your old letters?

Answer. No, sir.

Question. Do you remember what General Bartholow said to you in that letter?

Answer. The substance was, as I remember it, that a mixed commission had been formed or provided for in which the claims of the respective citizens of Mexico and the United States would be heard and examined into and settled. He brought that to my notice which I had not known before.

Question. Now, I want to ask you whether you would have had any trouble in raising all the money you wanted to carry on your mining operations at Tayoltita if you had received assurance that life and property were safe down there?

Answer. I should think it would not have been a difficult matter to get the necessary funds in that event.

Question. What effect, if any, did the statement in Exall's letters of July 13 and 14, that the officials were daily becoming more troublesome and that their demands were foolish and unjust, have upon your efforts to raise money?

Answer. They had the effect of preventing any further advances in that direction.

Question. Have you looked at your testimony before the Senate committee in regard to what you said as to receiving that letter of January 24, 1868, from Exall?

Answer. Yes.

Question. Now, I call your attention to page 178. On page 177 it appears that Senator Morgan commenced to read the letter of January 24, 1868, from Exall to you, and on page 178 that letter is completed, and then he asked you this question: "Did you receive that letter?" and you answered: "I have no recollection of having received it." He then asked you: "Were you informed of the state of facts set forth in that letter?" and you said: "I was not." Now, on page 161 of the same document this occurs: "The stenographer read the question, as follows: Proceed to point out any other matters that are stated in the report that Exall made to you that is in conflict with any statement that is contained in those letters that are before you. The witness (after examination). In these letters of October 6 and subsequently, which are claimed to be written by Mr. Exall, he goes on to say that he is greatly embarrassed for money, and would have to obtain money if it was not sent. I do not recollect of receiving these letters. I do not think I did, and his statements to me were not to the extent that he says here. He may have been troubled, the ores turning out so badly as they did, but they were not anything like these letters. I am satisfied of that. These letters, as I say, I have no recollection of receiving, of October 6 and of November 18, 1867, and of January 24, 1868." Now, is your recollection the same at present?

Answer. It is.

Question. Was any other property purchased from Del Valle than the mines for which he received $50,000?

Answer. Yes.

Question. What was it?

Answer. It was the hacienda, the buildings, the goods that were on hand that General Bartholow took possession of, and mules, and mining tools and whatever might have been there at that time.

Question. How much was he allowed for that property?

Answer. $7,500, according to General Bartholow's statement.

Question. Did General Bartholow remain in Mexico after you returned from your visit of inspection?

Answer. He did.

Question. And what position did he hold down there?

Answer. General manager and superintendent.

Question. I want to ask you in the most comprehensive way I can state it whether you have now or ever had any knowledge of any fraudulent act on the part of the company, or any of its officers or agents, including yourself, in respect to this claim against Mexico, or in respect to the methods of obtaining the evidence, or any part of it, that was submitted to the mixed commission?

Answer. I have not, and never had.

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Cross-examination by Mr. MAURY:

Question. You have spoken of a press-copy letter book as one of the books that were in the office of the company in New York, have you not?

Answer. I have.

Question. Did that press-copy book contain copies of the business letters written by you in behalf of the company?

Answer. It did.

Question. You have spoken of its not being worth your while or the while of the directors of the company to give any attention to this abandoned enterprise after its abandonment. Does that remark of yours apply to all the stockholders of the company?

Mr. KENNEDY. Objected to because the important qualification is omitted "until there was an immediate or early opportunity afforded for having a final determination of the claim."

Answer. I will say that it did, so far as my knowledge extends, until the formation of this Mexican and American mixed commission.

Question. Were all the stockholders of the company men of wealth?

Answer. Generally; I think so. I know of none that were not abundantly able to lose the subscriptions that they made.

Question. Did the stockholders in any way acquiesce in the indifference of the directors?

Mr. KENNEDY. Objected to on the ground that it characterizes the conduct of the directors, and ignores the fact that the directors were stockholders.

Answer. I think so.

Question. How did they acquiesce?

Answer. There was no objection, so far as I know.

Question. Were they informed of the determination of the directors?

Answer. I suppose so.

Question. How?

Answer. I do not know; by the secretary, probably.

Question. By the secretary, probably?

Answer. By the secretary, probably, or by those who were in New York and were cognizant of the fact. A great many of them were in Missouri.

By Mr. KENNEDY:

Question. Have you any doubt in your mind that you wrote letters to Exall between the 10th of October, 1867, and the time in May, 1868, when you saw him in your office?

Answer. I have no doubt that I did.

The examination by counsel being concluded, the witness, in answer to the final interrogatory by the commissioner, says that he has stated all that occurs to him at the present time material to the claim in question.

Signature waived.

[SEAL.]

ROBT. L. MILLER,
United States Commissioner.

[Here follows the commissioner's certificate.]

Deposition of Daniel T. Hoag, taken at New York, December 14, 1895, on behalf of the respondent, La Abra Silver Mining Company, by John A. Hillery, esq., notary public, on written interrogatories prepared by Mr. Kennedy. Cross-interrogatories waived by Mr. Maury.

First interrogatory. Please state your name, residence, age, and occupation.

Second interrogatory. If you shall say that you are president of the American Savings Bank, please state how long you have held that position, and how long you have been connected with the bank, where the bank is located, and what is the extent of its business.

Third interrogatory. How long have you resided in the city of New York, and in what business have you been engaged during such residence?

Fourth interrogatory. If you are now an officer in any church in the city of New York, please state what office you hold, in what church, and how long you have been officially and otherwise connected with that church.

Fifth interrogatory. If you were acquainted with the late George C. Collins, who was president of La Abra Silver Mining Company from October, 1866, to the time of his death, please state how long and how intimately you knew him, what his business had been and what it was in 1866, how well off he was at that time, and what was his standing as a merchant and as a man of integrity in the community.

Sixth interrogatory. Did you know what was the reputation of George C. Collins for truth and veracity among his neighbors and acquaintances and those to whom he was known? And if so, please state what his reputation was for truth and veracity.

Seventh interrogatory. With what church, if any, was George C. Collins connected, and what church office, if any, did he hold, and for what length of time did he hold it, and what was his conduct as an office bearer and member of the church, and was he or was he not one of its liberal supporters, and how was he regarded as to honesty and integrity by the ministers and his fellow-members of the church?

Eighth interrogatory. When did George C. Collins die, as nearly as you can recollect, and what estate did he leave at his death?

Ninth interrogatory. Did you know any other directors or trustees of La Abra Silver Mining Company during the time when Mr. Collins was president of the company; and if yea, what were their names and what was their standing in the community as men of means and integrity?

Tenth interrogatory. Have you any pecuniary or other interest, direct or indirect, in the award which was rendered in favor of La Abra Silver Mining Company or in the subject-matter of this suit, and are you in any way related to the company or its officers?

Eleventh interrogatory. Do you know of any other matter or thing touching the controversy between the United States and the said company in this suit? If yea, state the same as fully as if you had been interrogated in regard thereto.

The said witness, DANIEL T. HOAG, being duly sworn and examined, deposes and says:

To the first interrogatory: My name is Daniel T. Hoag; I reside at No. 51 West Forty-ninth street, in the city of New York; am 77 years of age; president of the American Savings Bank, New York City.

To the second interrogatory: I have held the position of president of the American Savings Bank about ten years; the bank is located at No. 501 Fifth avenue, corner Forty-second street, New York City. It is not a large bank; our deposits are something over $800,000; an institution of excellent condition and standing.

To the third interrogatory: I have resided in New York for nearly fifty years; for nearly thirty-five years I have been engaged as a merchant; the balance of the time I have been engaged in the banking business.

To the fourth interrogatory: I am senior warden of St. Thomas's Protestant Episcopal Church in New York; I have been in the vestry nearly twenty-nine years.

To the fifth interrogatory: I was intimately acquainted with the late George C. Collins, who was the president of La Abra Silver Mining Company, for upward of twenty years; he was a merchant in high standing and credit; he was a man of good means and undoubted credit and of unquestioned character and integrity; respected by all.

To the sixth interrogatory: Yes; I did; it was universally good. His reputation for truth and veracity was good beyond question.

To the seventh interrogatory: He was a vestryman for many years in St. Thomas's Protestant Episcopal Church—at least twenty years. He was treasurer for many years, and served on the standing committee of said church, also chairman of the building committee in erecting the present edifice at Fifth avenue and Fifth-third street, New York City. His conduct as an officer and member of the church was most excellent. He was one of its most liberal supporters of both time and means. He was regarded above reproach and held in high esteem by his fellow-members of the church.

To the eighth interrogatory: He died in February, 1875. He left an estate of about $250,000.

To the ninth interrogatory: I have no knowledge of said silver mining company. I did not know, to my own knowledge, any of the directors or trustees of said La Abra Mining Company during the time Mr. Collins was president thereof.

To the tenth interrogatory: I have not the remotest, nor ever had, nor am I related in any way to the company or its officers.

To the eleventh interrogatory: I know nothing further of interest, matter, or thing touching the controversy between the parties in this suit.

DANIEL T. HOAG.

Deposition of Henry C. Potter, taken at New York December 23, 1895, on behalf of the respondent, La Abra Silver Mining Company, by John A. Hillery, esq., notary public, on written interrogatories prepared by Mr. Kennedy. Cross-interrogatories waived by Mr. Maury.

First interrogatory. Please state your full name, age, residence, and occupation; and, if you shall say that you are a bishop of the Protestant Episcopal Church of the United States, please state of what particular bishopric, and how long you have held that office.

Second interrogatory. Have you any interest, direct or indirect, in the award that was rendered in favor of the respondent, La Abra Silver Mining Company, by Sir Edward Thornton as umpire of the United States and Mexican Claims Commission, under the convention of July 4, 1868, between the United States and Mexico, or are you related in any way to the said company or any of its officers?

Third interrogatory. If you were acquainted with George C. Collins, late of the city of New York, deceased, please state the commencement, nature, and duration of your acquaintance with him as nearly as you can recollect.

Fourth interrogatory. What kind of a man was the said George C. Collins in respect of honesty, uprightness, and integrity of character, and how was he esteemed by the community in these respects?

Fifth interrogatory. What relations, if any, did he hold to the church, and what was his conduct in these relations?

Sixth interrogatory. Did you know what was his reputation for truth and veracity among his neighbors and acquaintances and those to whom he was known; and, if yea, what was his reputation for truth and veracity?

Seventh interrogatory. Do you know any other matter or thing touching the subject-matter in this suit? If yea, please state the same as fully as if you had been interrogated in regard thereto.

HENRY C. POTTER, having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposeth and saith as follows:

To the first interrogatory: Henry C. Potter; aged 55 years; reside at 10 West Washington square; occupation, bishop of the Protestant Episcopal Church of the United States; have held the office for thirteen years.

To the second interrogatory: No; I have none, nor am I related in any way to the said company or its officers.

To the third interrogatory: I came to know him about the year 1869. I have no recollection of how I became acquainted with him; he was a member of the vestry of St. Thomas's Church, New York City.

To the fourth interrogatory: So far as I know, of the highest character, and so esteemed.

To the fifth interrogatory: He was a vestryman of St. Thomas's Church, and his conduct, as far as I am informed, was most excellent.

To the sixth interrogatory: It was of the highest, as far as I know.

To the seventh interrogatory: I have no knowledge whatever of any matter or thing touching the subject-matter of this suit.

HENRY C. POTTER.

Deposition of Mark Birmingham, taken at New York, February 15, 1896, on behalf of the respondent, La Abra Silver Mining Company, by John A. Hillery, esq., notary public, on written interrogatories prepared by Mr. Kennedy. Cross-interrogatories waived by Mr. Maury.

First interrogatory. Please state your name, age, residence, and occupation.

Second interrogatory. Have you any interest, direct or indirect, in the award rendered in favor of La Abra Silver Mining Company by the

United States and Mexican Claims Commission, under the convention of July 4, 1868, or are you in any way interested in the subject-matter of this suit, or in any way related to the company or any of its officers.

Third interrogatory. If you were connected with the Durango Silver Mining Company, and its successor, the Durango Mining Company, from the year 1865 to the year 1875, please state what your connection with those companies was and where their business in Mexico was carried on.

Fourth interrogatory. If you shall say that you are owner of the "Avio" right, please explain what that is and when you acquired it; and if you shall say that you were a stockholder in those companies, please state how much or what proportion of the stock you held during the years mentioned; and if you shall say that you were a director of those companies, please state when you became a director and how long you acted in that capacity.

Fifth interrogatory. What was the name of the principal mine or system of mines belonging to the Durango Mining Company from 1865 to 1875?

Sixth interrogatory. Are you acquainted with Charles B. Dahlgren; and, if yea, for how long have you been acquainted with him and how intimately?

Seventh interrogatory. In what capacity, if any, and where and for how long was he connected with the Durango Mining Company?

Eighth interrogatory. On page 405 (side paging 117) of the complainant's Exhibit A, attached to the bill in this suit, are the following questions and answers in a deposition purporting to have been made by Charles B. Dahlgren on the 18th of September, 1872, before Isaac Sisson, United States consul at Mazatlan: "13. Q. How many foreign companies were there doing business in mining in San Dimas district in 1866 and 1867, and how many are now left in the district of San Dimas? Is there any at all except the Durango company, which you represent as superintendent?—A. There were a large number of American mining companies in that district in the years named, but only the Durango company now remains. 14. Q. How is it that your company can remain there without disturbances?—A. We have had disturbances and difficulties, but we have found it necessary to submit to all exactions, whether lawful or unlawful, which makes it to the interest of the authorities to keep us there; we have found out how to manage and interest them, otherwise I suppose my company would be compelled to leave like the others, without a doubt." Please say whether, from your knowledge of the company's affairs as a director, stockholder, or owner of the "Avio" right, Dahlgren's answer to the fourteenth question, as given above, was true; that is to say, whether in 1872 the Durango company had had disturbances and difficulties and had found it necessary to submit to all exactions, lawful or unlawful, and had found out how to manage and interest the Mexican authorities, or any of them, in the success of the company's business?

Ninth interrogatory. Do you know of anything or have you any reason to make you doubt that Dahlgren made the answers quoted in the last interrogatory from his deposition?

Tenth interrogatory. Do you believe that he made those answers?

Eleventh interrogatory. What services, if any, had you rendered to the Mexican authorities or people?

Twelfth interrogatory. What promise of protection for the company, if any, did you receive from the Mexican authorities on account of those services?

Thirteenth interrogatory. What connection, if any, had Joseph G. Rice with the Durango Mining Company, and how was he related to you?

Fourteenth interrogatory. What circumstances, if any, enable you to fix the time of his departure from San Dimas on his final return to the United States?

Fifteenth interrogatory. When was it that he left San Dimas for the United States on his final return?

Sixteenth interrogatory. When did he die?

The said MARK BIRMINGHAM, being duly sworn to testify the truth, the whole truth, and nothing but the truth relating to said cause, deposes as follows:

Answer to first interrogatory: My name is Mark Birmingham; aged, 68 years; I reside at New York City; occupation, president of Candelaria and Durango Mining Company of Mexico.

Answer to second interrogatory: No; none whatever.

Answer to third interrogatory: I was a large stockholder and director of both companies. These companies owned the lease or the habilitator right or interest in the mines in the possession of said companies; and I was also the owner of the real title to the Candelaria mines, subject to the said lease or the contract "avio." The business was carried on at San Dimas, State of Durango, Mexico. The principal office was in New York City.

Answer to fourth interrogatory: The owner of the "avio," or "avida," right in a mine is the real owner of the fee title, subject to the lease or contract of "avio" made to habilitators, who are also called "aviadoros." I acquired the right of the title to Candelaria mines September 29, 1865. In the Durango Silver Mining Company I owned the majority of the stock issued, which was full paid. The Durango Mining Company was a reorganization of stockholders of the Durango Silver Mining Company. Part of the stock I was entitled to in the Durango Mining Company was issued to me. The balance was never fully determined. I became a director soon after the organization of the Durango Silver Mining Company in 1865. I was a director during the entire time of that company. I was one of the organizers of the Durango Mining Company, and was made a director at the time of the organization, and so continued a director through reelections until they ceased to have reelections. I suppose I am a director yet, but the company is inoperative. I never have sold any part of aviadoros or habilitated company stock until I transferred my rights in the Candelaria mine to the Candelaria and Durango Company of Mexico, in 1890.

Answer to fifth interrogatory: The Candelaria mines, the Bolanos mines and its extensions, Cincosonores and its extensions, and haciendas or reduction works.

Answer to sixth interrogatory: Yes; I knew him before he was engaged on the Candelaria and other mines belonging to the Durango Mining Com-

pany, as lessees of the Candelaria or habilitators, and have known him ever since; have met him several times and conversed with him this year.

Answer to seventh interrogatory: As superintendent and manager of the mines at San Dimas, Mexico, for several years. I don't recollect the exact time he was engaged, but I know he was in charge of the mines as late as August, 1874.

Answer to eighth interrogatory: Our first Candelaria habilitator company was formed in July, 1863, under the name of the Candelaria Mining Company, I becoming one of the incorporators, directors, and small stockholder, subsequently increasing my interest in the stock of the said habilitator company under their contract of avio right of lease until I owned eight-twentieths of all the stock issued. I. G. Rice was the superintendent of the mines at San Dimas from 1863 to March, 1868, said Rice having been appointed superintendent first by the Candelaria Mining Company and reappointed superintendent by the successor company, the Durango Silver Mining Company, March 11, 1865. The Candelaria Mining Company, above mentioned, from its organization in 1863 had prominent Mexican persons interested as stockholders, Judge Pedro J. Barraza and other Mexicans, whose influence assisted and gave us certain protection to our property at San Dimas. The Candelaria Mining Company of California becoming a stockholder in the Durango Silver Mines of New York indirectly gave these Mexicans an interest in the subsequent New York incorporations until I purchased their interest out.

Answer to ninth interrogatory: I do not doubt that he answered as stated, and further, that he believed to be true what he did state.

Answer to tenth interrogatory: Yes; I do.

Answer to eleventh interrogatory (condensed from original by consent): In 1863 and 1864 before I became largely interested in the San Dimas mines or in the stock of the Candelaria Mining (habilitator) Company, I assisted the agents of Mexico and of the State of Sinaloa while I was a banker in California, and while those agents were in that city, to ship arms for the republican forces, and I subsequently protected a deposit of $10,000,000 in Mexican bonds from sale as collateral security for the payment of a comparatively small sum, without any profit to myself, simply as a friend of the republican cause in Mexico. These agents were General Vega and Judge Pedro J. Barraza. I indorsed for them to the extent of $60,000 for supplies, and advanced $5,000 for a shipment of powder to Mazatlan, but the French seized that port, and the schooner, laden with the powder, ran up the Gulf of California, and I was informed that the powder was seized by local officials. I lost my $5,000 and never made a claim against the Mexican Government, but during this time these gentlemen encouraged me to increase my investments in the San Dimas mines and assured me that I should be protected. They also represented that the mines were very valuable and had a great future, and that I should have special favors, such as the right to export bullion free of export duty, as well as special protection at the mines. This gave me such confidence that I increased my interest largely, and, as I said in answer to the eighth interrogatory, the influence of Judge Pedro Barraza and other prominent Mexican persons, who were interested in the mines as stockholders, gave us certain protection to our property at San Dimas.

Answer to twelfth interrogatory: In part, I have already answered this question. My interest was protected until I purchased the interest these Mexicans had in said mines, some time subsequently.

Answer to thirteenth interrogatory: He was superintendent up to March, 1868. Also my brother-in-law. I married his sister.

Answer to fourteenth interrogatory: Letters and documents of 1868.

Answer to fifteenth interrogatory: Some time in April, 1868. He had resigned his superintendency in 1867, but for certain reasons remained over when Mr. Martin was appointed his successor until 1868, when he wrote that he would expect to arrive in San Francisco in the latter part of March, but was detained until later. I placed the time of his arriving from Mexico from the fact that he had been appointed to take charge of the Mariposa Estate and which required his coming to New York, and he only arrived here in June, 1868, and was then appointed by John A. Stewart and myself as associate trustee of the Mariposa Estate. He was appointed superintendent early in July, 1868. The cause of his withdrawal from San Dimas was at my request, offering him this new position.

Answer to sixteenth interrogatory: He died while in my employ in 1872.

MARK BIRMINGHAM.

It is hereby stipulated that what follows is a correct extract from the minutes of the testimony taken by a subcommittee of the Foreign Relations Committee of the United States Senate on the 25th of February, 1889, as printed in Senate Report No. 2705, Fiftieth Congress, second session (p. 938), to wit:

"Mr. FOSTER. If you are now prepared to adjourn?

"The CHAIRMAN. I am.

"Mr. FOSTER. Before you adjourn we will answer the opposition that we reluctantly, and in order to avoid any excuse for further delay in this investigation, will admit that Danglada, if present, would swear to this statement contained in the telegrams.

"The CHAIRMAN. I will read it. Shellabarger & Wilson, counsel of La Abra Silver Mining Company, sent a dispatch addressed to Domingo Danglada, at Mazatlan, Mexico, dated February 21, 1889, at Washington, D. C., as follows: 'Dahlgren swears he did not sign his deposition taken September, 1872, before Sisson, about La Abra claim, but signed a blank sheet of paper. Sisson swears that Dahlgren signed said deposition when fully written out, and that it was read to Dahlgren by Peña in your presence, and you tied it up. Which is the truth? Wire at our expense. Shellabarger & Wilson. Via Galveston, February 23, 1889, dated Mazatlan, 23. Shellabarger, R. J. Wilson, Washington, D. C.: Sisson is correct. Dahlgren signed deposition when fully written out. D. Danglada.'

"It is admitted by the counsel for Mexico that if D. Danglada were here he would swear that he received the telegram above copied and made the answer above copied, and would swear that: 'Sisson is correct. Dahlgren signed deposition when fully written out.'"

It is further stipulated that if Samuel Shellabarger and Jeremiah M. Wilson were examined as witnesses in this cause touching the aforesaid telegraphic correspondence, they would testify that they were of counsel for La Abra Silver Mining Company before the aforesaid subcommittee, and that after Charles B. Dahlgren had been examined on behalf of the Mexican Government, and Isaac Sisson, ex-consul of the United States at Mazatlan, had been examined in rebuttal on behalf of the said company, they, the firm of Shellabarger & Wilson, sent from Washington, D. C., a telegraphic message to Domingo Danglada, at Mazatlan, Mexico, and received an answer from him by telegraph, in the words, figures, and letters as printed in the aforesaid report and copied therefrom in the foregoing extract.

It is further stipulated that the foregoing is admitted in evidence for what it may be worth in connection with the allegations in the complainant's bill in regard to Charles B. Dahlgren and his deposition, which was filed, on behalf of the respondents, with the mixed commission, under the convention of July 4, 1868.

WM. A. MAURY,
Special Agent to Attorney-General.

WASHINGTON, D. C., *January 4, 1896.*

[Circular.]

[Certificate from the Secretary of State, February 15, 1896, as to the following circular matter.]

DEPARTMENT OF STATE,
Washington, D. C., February 23, 1870.

The convention between the United States and the Republic of Mexico of the 4th of July, 1868, provides for a final settlement, by a joint commission, of all claims on the part of the corporations, companies, or private individuals, citizens of one country against the Government of the other, arising from injuries to their persons or property, which may have been presented to either Government for its interposition with the other, since the signature of the treaty of Guadalupe Hidalgo, between the two countries, of the 2d of February, 1848, and which yet remain unsettled, as well as all such claims as may be presented within eight months from the day of the first meeting of the commissioners. That period expires on the 31st day of March, 1870. The convention also provides that all claims arising out of any transaction of a date prior to its ratification are to be hereafter forever barred and inadmissible, whether presented to or laid before the commissioners or not.

In this state of facts, it has been considered by this Department as advisable not to withhold from presentation to the commissioners any of the claims of our citizens, but to refer them to the commissioners for decision. It has accordingly referred, and will continue to refer, to the joint commission all claims of the corporations and citizens of this country which may be presented in due time, without special examination of their merits.

It is not, therefore, to be inferred, from the fact of presentation, that the Government thereby expresses any opinion upon the merits of the

claims presented, either as regards the facts of the case, which, in most instances, remain to be fully developed before the commissioners, and of which the Department therefore can not judge, or as regards the principles of the law to be invoked in their support. The responsibility of deciding questions of fact and law rests with the commissioners, but it has been and is the purpose of this Department to interpose no obstacle to the submission of any claim with such proofs and arguments in its support as the claimant may furnish.

Claimants desiring further information are referred to J. Hubley Ashton, esq., the agent and counsel of the United States, who is to be addressed at 355 H street, Washington, D. C.

HAMILTON FISH,
Secretary of State.

Extracts from La Abra Company's books.

Transcripts of entries from the account books of the respondent, La Abra Silver Mining Company, submitted on behalf of the said respondent under a stipulation between the parties, which is printed on pages 188 and 189 of Complainant's Evidence.

These books, which were kept in the company's office at Tayoltita, Mexico, were produced by Alexander K. Coney, consul-general of Mexico, a witness for the complainant, at San Francisco, Cal., and were attached to his deposition on behalf of the complainant on the 13th of October, 1894. (See Complainant's Evidence, pp. 105–109.)

EXPENSE ACCOUNT. (EXHIBIT 30, P. 103.)

1868.			
Jany. 8.	Mozo to San Dimas	$1.13	
	Acct. old hacienda	5.00	
	Prestimo (sic)	50.00	
14.	Postage	.06	
	Court expenses	3.50	

EXPENSE ACCOUNT. (EXHIBIT 30, P. 109.)

	Brought forward		$7.31
1868.			
Feby. 8.	Mozo to San Dimas	$0.25	
15.	" " " "	.25	
21.	Mule to Guarisamay	.75	
"	Expenses to Durango	16.00	
	Paid taxes hacienda	30.00	
	" " mill	20.00	
	" " mercantile	32.50	
25.	Matias to San Dimas	.38	
			100.13
10.	A. Navidad, on acct	2.00	
28.	" " "	3.00	
			5.00
13.	M. Abalos, on acct	.50	
25.	" " "	.25	
			.75
			113.19

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LEDGER. (EXHIBIT 24, PAGE 22.)

[1st Ledger.]

DR. *La Abra Silver Mining Company.* CR.

1865.		1865.	
May 1. Balance.....	$101,972.00	Dec. 15. By cash (3).....	$72,752.00
		1866.	
		Jan. 15. do. (6).....	10,000.00
		Feb. 1. do. (8).....	70.00
		March 1. do. (15).....	10,075.00
		April 10. do. (20).....	9,000.00
		April 10. do. (21).....	75.00
	101,972.00		101,972.00
		April 30. By balance.....	101,972.00
		April 30. By cash (27).....	200.00

EXHIBIT 29, PAGE 90.

[2nd Ledger.]

1866.		1866.	
Dec. —. To Guadalupe Co. (193).....	$1,100.00	May 1. By balance.....	$102,172.00
To cash (193).....	12.50	May 1. By cash (120).....	15,699.94
To cash (195).....	75.00	June 1. By " (136).....	15,472.89
Dec. 31. To balance.....	150,053.08	July 1. By " (153).....	10,400.00
		Nov. 1. By " (169).....	7,190.00
		Dec. 1. By Terwilliger, prem. (179).....	3.50
		Dec. 1. By cash (194).....	302.25
	151,240.58		151,240.58
		1867.	
		Jany. 1. By balance.....	150,053.08
		Jany. 1. By cash (198).....	58.75
		Feb. 1. By " (202).....	7,659.40
		Mar. 1. By George Cullins (215).....	38.37

EXHIBIT 28, PAGES 26, 27.

[3d Ledger.]

1867.		1867.	
Dec. 31. To balance	$163,009.60	Apr. 1. By amount transfd..	$157,809.60
		Apr. 1. By cash	5,200.00
	163,009.60		163,009.60
		1868.	
		Jany. 1. By balance.....	*163,009.60

*This is the exact amount which is entered in Exhibit 44 opposite "La Abra S. M. Co." Exhibit 44 seems to be a trial balance sheet, and, being brought down to a later date, foots up $166,768.51.

Balances of accounts as per Exhibit No. 28 (Exall's ledger, which includes the accounts of the two previous ledgers, Exhibits Nos. 29 and 24).

Pages.		Date of last item or of balance struck.	
52, 53	La Luz Mine	Feb. 3, 1868	$21,913.17
54, 55	El Cristo Mine	Jan. 1, 1868	10,804.40
56, 57	La Abra Mine	Jan. 31, 1868	2,834.93
58, 59	Bartholow Mine	Apr. 1, 1867	164.80
60, 61	Arrayan Mine	Feb. 16, 1868	1,916.33
62, 63	Animas Mine	Apr. 1, 1867	55.24
142, 143	Rosario Mine	Jan. 1, 1868	180.90
146, 147	Sanz Mine	Jan. 1, 1868	1,156.07
	Total		39,025.84
38, 39	Machinery and buildings	Jan. 1, 1868	52,140.41
48, 49	Mill acct. ($4,565.40–$3,804.98)	Dec. 31, 1867	760.42
42, 43	House expense acct	Feb. 29, 1868	5,503.45
44, 45	Personal expense acct	Febry., 1868	10,786.16
50, 51	Store expense acct	Jan. 3, 1868	3,172.95
32, 33	Merchandise acct	Feb. 29, 1868	3,365.55
46, 47	Mule acct	Jan. 14, 1868	1,387.38
28, 29	Profit and loss acct	Apr. 1, 1867	993.77
114, 115	Robbery acct	Apr. 1, 1867	1,178.00
36, 37	Mines and hacienda acct	Apr. 1, 1867	50,700.00
40, 41	Cash acct	Feb. 1, 1868	98.21
			169,112.14

STIPULATION AS TO CERTAIN ENTRIES AND THE AVERAGE PREMIUM ON GOLD.

It is hereby stipulated and agreed between counsel for the parties to this action:

1. That there are entries in the books of La Abra Company in October, November, and December, 1867, and January, February, and March, 1868, by way of debit and credit to Calderon, Rabita, Solio, Navidad, Perez, Abalos, and other workmen employed at the company's mines, or to some of them.

2. That there are entries in the said books in October, November, and December, 1867, and January and February, 1868, against La Abra, La Luz, Arrayan, and Sanz mines for fuse, gunpowder, or other items; also on "mill account" in October, November, and December, 1867, for wood, salt, quicksilver, etc., there being a debit of $563.09 on that account in December, 1867, for merchandise, in which the wages of workmen in the mill, as well as in the mines, were paid.

3. That in Exhibit No. 28, page 49 (Exall's ledger), mill account is credited by cash, July, 1867, $1,525.82; September, 1867, $1,356; November, 1867, $923.16, and December 31, 1867, "balance," $760.42; that in Exhibit No. 30 (Exall's journal) these first three amounts are entered in the same months respectively as "returns from mint for bullion," and that in the same exhibit there are the following items: April 4, 1867, paid for refining silver at San Dimas, $6.75; April 19, 1867, for recovery silver at Mazatlan, $237.66; May 22, 1867, paid for shipment silver, $9.50; September 6, 1867, paid for refining silver, $10.62; December 4, 1867, for refining silver, $2.62; December 23, 1867, exps. on silver, $4.50.

4. That from March, 1865, to March, 1868, gold was at an average premium of 50 per cent or thereabouts in New York.

WM. A. MAURY,
Special Assistant to the Attorney-General.
CRAMMOND KENNEDY,
Of Counsel with La Abra Company and other Respondents.

Extracts from the closing argument for La Abra Silver Mining Company before the umpire of the mixed commission.

"The Exhibits V, W, X, and Y are admitted to be authentic documents, for they are acknowledged by the judge who issued them. The learned Mexican commissioner does not deny their authenticity, though he questions the accuracy of the translation of them made by Mr. Tripler, the official translator of the commission. But before any discussion of the effect of these extraordinary papers it must be considered that by the laws of Mexico the *gefe politico* had no jurisdiction or authority whatever in any matters of dispute between the operatives of a mine and the owners of the same. The *diputacion de mineria*, established by law in every mining district, alone had jurisdiction in such cases, and the interference of the *gefe politico* or the local judge was of itself an arbitrary and illegal act. If the superintendent had failed, as is falsely pretended, to fulfill his contract with the operatives, they had their remedy under the mining laws, which are summary in their action. If the company owed the men for their labor, they had the means of coercing payment in the most peremptory manner, and there was sufficient property to satisfy any judgment that might have been rendered.

"The communication of the 3d of July (June) from the *gefe* to the judge does not complain that any amounts are in arrears to the men, but directs the judge to notify the company that they must continue the last contract with the men, or else vacate the mines and let the men work them as they would.

"The criticism of the learned Mexican commissioner, as to the translation of this order, appears to us to be founded on "a distinction without a difference." He insists that the *gefe's* letter contains no order to vacate the mines, but only "to allow the operatives to work the mines as they can." It would be difficult to understand how the company could obey this order without first vacating the mines. But whether the translator misinterpreted the document or not, it is certain that the judge to whom it was addressed understood it as we do, and immediately acted on it according to that understanding. In his communication to the company the next day—July 4, 1867—the judge, by order of the *gefe*, says *imperatively*, "*Desde luego desocupar las minas*"—"You will immediately vacate the mines;" and not having received an answer to this mandate within twenty-four hours, the judge repeats the order and requires an arrangement to be made within two hours, and he concludes, "If you come to no arrangement you will vacate the mines, so that they may lose no more time."

"It would, perhaps, be presumptuous in us to question the learned commissioner's understanding of his own language; but we must, nevertheless, be allowed to say that we think Judge Soto interpreted the disputed order correctly. And we submit to anyone having a knowledge of the Spanish language whether the words "*dejar las minas, que las trabajan los operarios, a la maneria que puedan*" can be understood to have any other meaning than that which has been given to them by the translator.

"The learned commissioner insists that the order was only "a well-intentioned notice or admonition by the local authorities," but he admits that, as it was understood and acted on by the judge to whom it was addressed, "it assumed the aspect of an act of despotism or a threat against property." With all due deference to the learned commissioner, we insist that this is precisely the true character of the order. It was an usurpation of authority where none existed; it was a threat against the company's property and an act of the grossest despotism. But as to the true meaning of these orders, we prefer that the official translator, Mr. Tripler, should be heard in defense of his own official translations in this case, and we here insert his answer to questions by claimant's attorney, as follows:

'UNITED STATES AND MEX. CLAIMS COMMISSION,
'*Washington, July 22, 1875.*

'Gen. A. W. ADAMS.

'DEAR SIR: In reply to yours of the 15th instant, concerning the objections raised by the Hon. Mex. commissioner, in his opinion, to certain translations made by me in the case of the Abra Silver Mining Company *v.* Mexico, I have to say emphatically, the Hon. Mexican commissioner to the contrary notwithstanding, that my translation is correct; that the equivalent given by me in the translation is the precise meaning of the spirit and the letter of the Spanish, and that the original means what I say, or it means nothing. I regret to be compelled to say so, but I am convinced that the Hon. Mexican commissioner *knows* that my translation is correct.

'I am not disposed to follow him in the rule of grammar that he has specially created for this occasion, and which I may say is invented for a particular purpose.

'That I am correct in my translation; that it conveys what was the meaning and intention of the gefe politico; that this was what was understood by the judge to whom the communication was addressed, and that the Hon. commissioner must have so understood it, is susceptible of the clearest and most convincing proofs by the papers themselves.

'The communication of the gefe to the judge, as the paper shows, directed him, the judge, to notify the party in charge of the mines of the contents of that communication. The judge in fulfilling this order did not confine himself to the language of the gefe, but transcribed the order in his own language, thus showing what *he* understood to be the meaning and import of the communication, and he, the judge, tells the superintendent to "*desocupar*," to "step down and out," to leave, to vacate.

'Here, then, there was no doubt about the true intent and meaning of the gefe, even though the translator may have been mistaken. The gefe

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politico intended to and did tell the judge to notify the superintendent to pay his men in a certain manner, or else to vacate the mines and give them up to the operatives; and this was the order from the judge to the superintendent, in as good and clear Spanish as the commissioner or anybody else can write.

'The commissioner may, perhaps, tell us that the word "desocupar" does not mean to vacate, or to leave, or to "step down and out." If he should assume this position, then as a matter of course there is nothing more to be said, but it would not be a bit more flagrant than his now disputing the correctness of the translation in question.

'Very respectfully, your obedient servant,

'WILLIAM C. TRIPLER,
'*Translator U. S. and Mexican Claims Commission.*'"

It is hereby stipulated and agreed between counsel for the parties to this suit that the foregoing matter, entitled "Extracts from the closing argument for La Abra Silver Mining Company before the umpire of the mixed commission," is a correct transcript from the closing argument of Mr. Jeremiah S. Black and Mr. Frederick C. Stanton, of counsel for La Abra Silver Mining Company, before the Right Hon. Sir Edward Thornton, K. C. B., umpire of the United States and Mexican Claims Commission, under the convention of July 4, 1868, between the United States and Mexico, as printed by the said company and signed by the said counsel for the use of the said umpire.

It is hereby further stipulated and agreed that the said transcript is admitted in evidence for what it may be worth in proof of the fact that the question of the true meaning and intent of the order or instructions issued by the prefect, Mora, on the 3d of June, 1867, was in issue and was argued before the said umpire upon the statements of the Mexican commissioner, Zamacona, and of Mr. William C. Tripler, official translator of the said commission; and the said transcript is also admitted for what it may be worth on any other relevant matter.

WM. A. MAURY,
Special Assistant to the Attorney-General.

WASHINGTON, D. C., *March 9, 1896.*

Extracts from appendix to report No. 2705, Senate, Fiftieth Congress, second session.

"Now, the question is whether a new trial is to be granted, or, rather, whether this subject is to be investigated in our domestic tribunals to ascertain what is the duty of the United States. That is a broad question, and one upon which I should think the Senate would like to be informed as to the whole state of the case.

"This witness has not hitherto been examined in the matter, except *ex parte* at the instance of Mexico, with a view of identifying this book and raising a diplomatic question with the United States about the proposed disposition to be made of this money. This is his first appearance in anything like an inquiry where both sides have an opportunity of being heard. He comes forward with a book of correspondence, kept at the hacienda of the company in Mexico, in which appear letters written

by three agents of that company—Bartholow, De Lagnel, and Exall—and perhaps other letters written by Granger—a man who was there, we have not as yet found in what capacity exactly. Now, the examination is pursued with a view to show, as I suppose, that the description given of the conduct of the business and the situation of things in many particulars, as disclosed by the correspondence, was the actual state of facts as they existed at the time, and that these agents—at least so far as Mr. De Lagnel knows—were not making to that company false representations; that what they said about it was true. The condition of the mine, as to its yield, as to its depth, the quantity of débris that was in it, the difficulties of mining, and all the other surrounding circumstances that bear upon questions of extent and the facility of conducting business of this kind, it seems to me are legitimate subjects of inquiry for this committee to make, with a view of ascertaining whether or not the matters stated in this correspondence, which Mexico alleges are newly discovered evidence, were truly and correctly stated at the time by the respective agents of the company.

"When we come to consider this case and report it to the general committee, as I suppose the general committee will also do when they come to consider and report it to the Senate, we will be compelled, of course, to separate between these portions of the evidence which are new and those which were before the arbitrators at the time this claim was considered, and we will be compelled to ascertain how far Mexico was delinquent in not presenting this evidence in defense of the claim, and whether thereby she has forfeited her right to have a reinvestigation.

"But we can not anticipate at this stage of the inquiry how much of this evidence will be new, and how much will be of a character that Mexico had, and used, or could have used if she had been sufficiently diligent in the pursuit of her rights."

It is admitted that the foregoing paragraphs entitled "Extracts from appendix to report No. 2705, Senate, Fiftieth Congress, second session," are copied correctly from page 43 of the said appendix, and that they are remarks made by the Hon. John T. Morgan, chairman of the subcommittee to whom the bill, S. 2632 (now the act under which this suit is brought), had been referred, in explanation of the nature of the proposed investigation.

WM. A. MAURY,
Special Assistant to the Attorney-General.

WASHINGTON, D. C., *March 9, 1896.*

COURT OF CLAIMS.

THE UNITED STATES
v.
LA ABRA SILVER MINING CO. AND OTHERS. } In Equity, 17,917.

To CRAMMOND KENNEDY, ESQ.,
Of Counsel with Respondents.

SIR: Please to take notice that I shall introduce in evidence at the hearing of said cause a copy of the last three written pages of Exhibit No. 26, of the deposition of complainant's witness, Alex. K. Coney, a copy whereof is hereto annexed, and the same being taken from the blotter book of La Abra Silver Mining Company.

WM. A. MAURY,
Special Asst. to the Att'y Genl.

April 1, 1868.

N. A. Sloan—	
1 plug tobacco	50
Andrez Navidad—	
Cigarros	09
½ soap	31
½ silk, ½	25
½	19

14.

Ralph Martin—	
1 doz. sevut bil	4.00
J. G. Rice—	
5 doz. sardines, 3.00	15.00
4 bott. brandy, .75	3.00
1 pr. Manta Blanin, 40, .20	8.00
A. Navidad—	
1 undershirt	1.25
1 blue sash	75
1 soap	3

Cigarro 09
Sugar..... 06
Cigarros..... 09
Credit, J. G. Rice—
Sundries for I. G..... 3.63
M. Abalos—
2 cigarros..... 19

April 19, 1868.

M. Abalos—
Cigarros, ½; panocha, 12..... 31
Panocha, 2; candles, ¾; thread, ½..... 41

20.

Alfred A. Green—
51 lbs. Am. Steel, 35..... 17.85
4 picks, 2.00..... 8.00
2 shovels, 2.50..... 5.00
1 hammer, 60..... 3.60
1 saw..... 3.00
1 axe..... 3.00
1 quire paper 50
1 cartridge..... 10
2 pencils..... 25
Tobacco..... 25
Cigarros..... 50
Matches..... 50
Chisel 1.00
1 bar iron, 16, 15..... 2.40
Gaudalupe S. M. Co.—
25 envelopes en, 30, 37² 68
2 plugs tobacco..... 1.00
Credit, Gaudalupe S. M. Co.—
2 doz. matches.....
2 bls corn.....
M. Abalos—
Panocha, 3; soap, 3; cigarros, 2½..... 1.03

April 30, 1868.

Gaudalupe S. M. Co.—
2 plugs tobacco..... 1.00
Jas. Granger—
Sundries. 17.85

Credit, J. G. Rice—

1 carga corn	7.50
25 lbs. sugar, 31	7.75
⅓ Am. lard, 7.50	11.25
200 cigarros	11.25
Cash for nails	1.00
1¼ Am. lard	9.37
½ carga beans	4.25
J. G.	3.19

IN THE COURT OF CLAIMS.

THE UNITED STATES, Complainant, vs. LA ABRA SILVER MINING COMPANY *et al.*, Respondents.	In Equity, No. 17,917.

THE HON. WM. A. MAURY,
Special Assistant to the
Attorney General of the United States.

DEAR SIR: Please take notice that under and by virtue of the stipulation printed on pages 188 and 189 of Complainant's Evidence in this cause, I shall print in my brief or use in the argument the following entries to be found in the books of the respondent company, to wit:

From Exhibit No. 34, under date of June 6, 1866:

Rec at Heda 28⅓ cgs. at 10 from W. G. S. Clark.....	283.33	
Rec from W. G. S. C. to Scott...	75.	358.33
Clark's bill for Custom House fees Board and Sundries, expended on train.....	366.26	
Paid cash.....		366.26

From Exhibit No. 31, folio 34, under date of June 10, 1866:

Sundries Dr. to Cash		
Mdse.	W. G. S. Clark bill for freight, &c.....	519.07
" 252.08	C. H. dues and contgt.	
73.00	by W. Scott.....	325.08

Yours respectfully,

CRAMMOND KENNEDY,
Solr. for Respdts.

Washington, D. C., May 29, 1896.

Notice, of which the foregoing is a copy, received May 29, 1896.

WM. A. MAURY.

Filed June 6, 1896.

U. S. Court of Claims.

THE UNITED STATES
vs.
LA ABRA SILVER MINING CO. & OTHERS. } No. 17,917

It is hereby stipulated that the pamphlet hereto annexed, entitled "The Weil and La Abra Frauds–Petition of Jas. E. Slaughter," is the pamphlet referre l to by the witness Sumner Stowe Ely, in his deposition in this cause, as the "Slaughter Pamphlet." (Respdt's Ev., p. 2).

WM. A. MAURY,
Special Asst. to Att'y-Gl., for Compl't.

CRAMMOND KENNEDY,
Of Counsel with Resp't.

WASHINGTON, D. C.,
June 2, '96.

Filed June 2, 1896.

COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.* } Equity. No. 17,917.

Stipulation.

To save expense in printing the Record for the respondents' appeal, in the above entitled cause, to the Supreme Court of the United States, it is hereby stipulated as follows:

I. That in making up the Record the Clerk of the Court of Claims shall leave out so much of the petition

contained in the Slaughter pamphlet as is within the blue pencil brackets, and shall insert in the place thereof these words: The matter in the original document here left out relates to the claim of Benjamin Weil and is left out in pursuance of a stipulation filed.

II. The Clerk shall also leave out of the Record the whole of Exhibit A, contained in the Slaughter pamphlet, and insert in the place thereof these words: Exhibit A of the Appendix is omitted pursuant to a stipulation filed because it relates to the claim of Benjamin Weil.

In witness whereof we have hereunto subscribed our names this 12th day of October, in the year one thousand, eight hundred and ninety-seven.

WM. A. MAURY,
Special Asst. to Atty.-Genl., for Complainant.
CRAMMOND KENNEDY,
Solr., and of Counsel with La Abra Co. and Other Dfdts.

WASHINGTON, D. C.,
October 13, 1897.
Filed October 13, 1897.

PETITION.

To the Senate and House of Representatives:

The petition of James E. Slaughter respectfully shows:

That he is a citizen of the United States, resident of Mobile, in the State of Alabama, and that for some years he resided in the Republic of Mexico.

[The matter in the original document here left out relates to the claim of Benjamin Weil and is left out in pursuance of a stipulation filed.]

Your petitioner further shows—

That at about the same time he became aware of the fact that the United States had filed a claim in the name of the La Abra Mining Company, No. 489, which had been allowed by the umpire, and which was also fraudulent and based on the affidavits of perjured witnesses.

That the counsel for Mexico had moved for a rehearing in this case also, and that the motion had been first postponed and then denied by the umpire, who said in his declaration of October 20, 1876:

"In the above-mentioned case, No. 489, the Mexican agent would wish the umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been proof of perjury, the umpire would not have been justified in refusing evidence (credence) to the witnesses on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. If perjury can still be proved by further evidence, the umpire apprehends that there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the government of either would insist upon the payment of claims shown to be founded upon perjury."

That this claim was for the value, with interest, of mines and works in Tayoltita, Durango, from which it was alleged that a wealthy company had been driven by the Mexican authorities in March, 1868.

That upon examining the evidence for the claimant, your petitioner found that, except as to the imperfect evidence of title and five alleged original letters from Mexican officials, the claim was based entirely upon *ex parte* affidavits, the umpire having stated in his decision that "neither books nor reports have been produced, nor has any reason been given for their non-production."

That from these affidavits it would appear—

That certain Mexicans, in 1863 and 1864, through an agent in New York, tried to sell other mines on the strength of an allusion in Ward's Mexico, published in 1827, to the former richness of the La Abra mine, which these Mexicans did not own.

That certain parties went to Durango in 1865, and purchased these mines from the Mexicans and the La Abra mine from some Americans. The person paying the money swore that he paid for the Mexican mines $50,000 in drafts on San Francisco or New York, he did not remember which. The person through whom it was paid swore that it was paid in drafts and certificates of deposits, which were cashed on presentation in San Francisco. The Mexican to whom it was paid swore that he received it. Other witnesses swore that these parties paid more money and bought mines not included in the claim.

The party purchasing, who was the first superintendent, swore that he went to San Francisco and ordered a ten stamp-mill. He did not say how much it cost, but the third superintendent, who was not there at the time, swore that it cost over $60,000.

The third superintendent, the one alleged to have been driven away, swore that the expenditures on the mines after the purchase of the mill were over $300,000. The president of the company, which was formed in New York a year after the alleged purchase with a capital of $300,000, swore that they received from sales of stock $235,000, and from loans, &c., $64,291.06, and that this was the entire amount expended, including the purchase of the mines and mills. Other witnesses ran the amount of expenditures up to $400,000. The umpire adopted the figures of the president, but did not require the production of the stock-book or the books of expenditures.

Although the stamp-mill was purchased in 1865, the superintendent swore it did not commence to operate

until 1868, when out of a thousand tons of ore then mined he reduced twenty, netting $17,000.

The second superintendent was not a witness. The first and third swore that they left the old Mexican reduction works standing. The first superintendent swore that when he left in the spring of 1866, he had mined about 200 tons of ore worth about $500 per ton; but that his business in St. Louis was so much more important then than at the mines that he asked to be relieved. Instead of reducing these valuable ores by the old works left standing, all the superintendents kept drawing on New York for money to meet current expenses.

The investment, whatever it was, was made at the height of the French invasion, when French and Mexican troops were alternately occupying this very country. The abandonment was in 1868, when the country was at peace, and immediately after the immense yield of $850 a ton from the twenty tons said to have been reduced by the superintendent.

The *animus* of the pretended opposition of the local authorities to the Company was alleged to be a groundless belief, on their part, that the Company favored the annexation of Sinaloa and Durango to the United States. Neither Sinaloa nor Durango are within 700 miles of the American border.

This hostility was said to be directed against other Americans as well, notwithstanding the fact that other American companies in the same section lived all through it, and are there yet. Of the forty-odd claims of this character, this was the only one allowed.

The hostility was said to have been manifested principally by the local prefect and judge; and four of the five alleged original documents in the case are letters from these officials dated in June and July, 1867, directing the superintendent to conform to the mining ordinances by paying his workmen or allowing them to work the mines. This was eight months before the abandon-

ment. The prefect was dismissed in the same month of July. It is not alleged that the Company paid any attention to the notification of these officials, but on the contrary, it continued its operations, whatever they were. It is not alleged that the Company ever complained in the Mexican courts of the pretended persecution, though the claimant's evidence shows that it gained a civil suit against the persecuting judge in the courts of Durango in the following January. Nor did the Company complain to the Central Government of Mexico, notwithstanding the proclamations which it alleges were issued by President Juarez inviting investments of American capital in Mexico and promising protection. Nor was any protest alleged to have been made to the Consul or other authorities of the United States. The superintendent swears he left Tayoltita hurriedly and secretly and to save his life, on the 20th of March, 1868, and went to Mazatlan, where he borrowed money to take him to New York.

In March, 1870, a letter was written by two Washington attorneys to the Secretary of State, and referred by him to the Commission, making the first claim on behalf of this Company. In this letter, the damages were laid at $1,900,000. They were afterwards raised to $3,030,000, and again to $3,900,000.

Your petitioner further shows:

That he is now in possession of original books and reports of the said company, and other papers covering the entire period of its operations and extending some months beyond the abandonment of its mines, from which a few extracts are hereto appended, marked "Exhibit B."

Your petitioner further shows:

That on the 7th of November, 1877, the following resolution was introduced in the House of Representatives:

"[Forty-fifth Congress, First Session.—H. Res. 39.—In the House of Representatives, November 7, 1877.

"Mr. FORNEY, by unanimous consent, introduced the following joint resolution:

JOINT RESOLUTION in relation to suspending payment of the claims of Benjamin Weil, number four hundred and forty-seven, and the La Abra Silver Mining Company, number four hundred and eighty-nine, on the American docket of the late Joint Commission of the United States and Mexico.

"Whereas the Mexican Government has charged, and offers to prove, that the claims of Benjamin Weil, number four hundred and forty-seven, and the La Abra Silver Mining Company, number four hundred and eighty-nine, on the American docket of the late Joint Commission of the United States and Mexico, are based upon fraud and perjury; and

"Whereas international courtesy and justice toward Mexico require that the payment of said claims should be suspended, as payment of the Venezuelan awards was suspended, until an investigation can be had of said charges, to the end that the United States may not involuntarily be made a party to fraud upon a friendly nation: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Treasurer of the United States be, and he is hereby, directed to pay no moneys, on account of said two claims, until further information is obtained by Congress."

That subsequently a letter was transmitted by the Secretary of State to the chairman of the House Committee on Foreign Affairs, in which he said:

"DEPARTMENT OF STATE,
"*Washington, November* 6, 1877.

"SIR: I have the honor to invite the attention of your honorable committee to the necessity of immediate legislation to enable the prompt payment of the awards in favor of our citizens, under the convention of July 4, 1868, between the United States and Mexico."

And, with regard to these two claims,

"These awards standing on the same footing of finality under the Convention with all the others, are awaiting distribution."

Your petitioner is convinced that there is no principle of law, international or municipal, by which the United States are bound to distribute this money to the perjurers and their abettors in crime; and as legislation is declared to be necessary in the matter, your petitioner hereby tenders the proof of fraud to Congress and prays that a thorough and impartial investigation of these claims may be had, and if it shall be made satisfactorily to appear that the awards so as aforesaid entered in behalf of the said Benjamin Weil and the said La Abra Silver Mining Company are based upon fraud and perjury, that then, in conformity with the honorable declaration of the umpire last above quoted and in accordance with "public law, justice, and equity," which by the terms of article I of the treaty of 1868 were made the guides for the determination of said claims, the Mexican government may be forever released from all further accountability, therefor, to the end that honest claimants may receive their just proportion of the instalments now or hereafter to be paid by Mexico.

And your petitioner will ever pray.

JAS. E. SLAUGHTER.

[Exhibit A of the Appendix is omitted pursuant to a stipulation filed, because it relates to the claim of Benjamin Weil.]

[Exhibit B.]

THE STORY OF THE MINE.

HACIENDA LA ABRA SILVER MIN'G CO.
Tayoltita, January 16, 1866.

MESSRS. ECHEGUREN, QUINTANA & CO., *Mazatlan.*

GENTLEMEN: I am in receipt of your esteemed favor of the 10th inst., and have noted its contents. For your kind attention in receiving, mailing and forwarding my correspondence I beg to return you my thanks.

In the lot of letters received by Mr. Corell I have two from our mutual friend, David J. Garth, Esq., Treasurer of La Abra Silver Mining Co., New York, in which he says that the credit of the company shall be at all times fully maintained and that my drafts for such amounts of funds as are necessary to vigorously prosecute our work to an early completion shall at all times meet with due honor. I am under obligations to my friend, Dn. Juan Castillo, for his kindness in assuming the charge of my Atlantic correspondence, and should you have occasion to write to him during his absence have the goodness to express to him my thanks. I beg to advise you that to meet mining expenses and to pay hands for getting timbers for our mill and other necessary outlays, I have, under this date, drawn upon you in favor of Dr. W. B. Hardy for fifteen hundred dollars, in three drafts of $500 each. They are thus drawn so as to enable Dr. H. to sell them at San Ygnacio or San Juan, thus obviating the necessity of going to Mazatlan to obtain the money. * * * Your friend, TH. J. BARTHOLOW, *Supt.*

HACIENDA LA ABRA SILVER M'G CO.,
Tayoltita, Feb'y 6, 1866.

D. J. GARTH, Esq., *New York:*

DEAR SIR: * * * After I had gotten all of our machinery completed in San Francisco, and the belting, bolts, extras and tools shipped and paid for, I found that instead of having between 30 and 40 tons, which you had estimated the mill would weigh, I found I had nearly 80 tons, and instead of all costing $10,500, as you had estimated it, and me, also, in my report to the Company, I found that the entire cost was..... $15,500 00
The freight and duties 2,500 00
And the packing to Tayoltita, in consequence of the operations of Corona around Mazatlan, will average $16 to $18 a carga, or 9,000 00
The lumber and timbers will probably cost 4,000 00
Lime will also have to be increased to 1,200 00
Mechanics and laborers, I think, will be about former estimate... .... 7,000 00
Corn, salt, quicksilver, and other supplies .. 10,000 00
Castillo, for balance of account..... 7,000 00

$56,200 00

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The difference in estimate is caused principally by the weight of the mill, and its cost being first so greatly under estimated, and of course all calculations based upon the weight and cost of the mill in my former estimate are not reliable; and besides, when I left here for San Francisco in September, mules could be contracted for to pack, at from 8 to $10 per carga; but after the Liberals took possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get anyone to agree to pack at all; and had I not succeeded in getting military protection, our mill would now be lying at Mazatlan. * * * By the March steamer, I will have to draw for $10,000, (ten thousand dollars.) Yours, truly, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MIN'G CO.,
Tayoltita, Mexico, Feb'y 21, 1866.

W. C. RALSTON, ESQ.,
Cashier, San Francisco, Cal.:

DEAR SIR: Enclosed I hand you my draft in favor of Bank of California and on David J. Garth, Esq., New street, New York, for ten thousand dollars, (gold coin,) which you will please negotiate and place proceeds, with current rate of exchange, to my credit. I beg also to advise you that I have also drawn upon you at even date in favor of Messrs. Echeguren, Quintana & Co., Mazatlan, for ten thousand dollars; which said draft you will please honor when presented. Mr. Garth has embarked in the banking and exchange business, in connection with two of his old friends, in New York and Richmond, Va., under the firm of Harrison, Garth & Co., of which he has, most likely, advised you.

I am now starting 150 mules, which are sufficient to transport *all* the balance of my machinery, and, if they meet with no accident, all will be here by the 10th March and I will be ready to crush and beneficiate ore by the 1st June.

My miners in one of our mines a few days ago struck a small vein, about six inches wide, (an off-shoot) which is exceedingly rich, and the vein is widening daily. The ore will assay $500 per ton. I have now on hand 325 tons ore.

Your ob't serv't, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER M'G COMPANY,

Tayoltita, March 7, 1866.

Michael Kirch, of the city of San Francisco and State of California, is hereby authorized and empowered to cast the vote for the stock owned and held by this company, viz., five hundred and fifty shares (550) of the capital stock of Nuestra Señora de Guadalupe Silver Mining Company, at the general election for officers of said company to be held in the city of San Francisco in this month, and also at any other election which may be held subsequently, until this proxy shall be revoked.

TH. J. BARTHOLOW, *Superintendent.*

HACIENDA LA ABRA SILVER M'G COMPANY,

Tayoltita, March 7, 1866.

DAVID J. GARTH, Esq.

DEAR SIR: * * * In my last letter I informed you that one of my employés, Wm. Grove, esq., formerly of Saline county, Mo., was missing, and I feared had been waylaid and murdered. Since then my worst fears have been realized; for, after a search of two weeks, his body was found buried in the sand on the bank of the Pinstla river, some ten miles above the mouth of Candelero creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found. The mule is, however, likely to turn up, as it had our hacienda brand, "U. S.," on the left shoulder. These facts were promptly laid before the commander of the liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he had arrested and placed in confinement two men charged with the crime and his soldiers are in pursuit of the third. These we are assured will be tried by court-martial, and, if found guilty, will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking. * * * * *

Y'r fr'd, TH. J. BARTHOLOW, *Sup't.*

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HACIENDA LA ABRA SILVER M'G COMPANY,
Tayoltita, March 7, 1866.

Messrs. ECHEGUREN, QUINTANA & Co., *Mazatlan.*

GENTLEMEN: One of my mechanics desires to make a remittance of two hundred and fifty dollars to his brother, residing in Scotland, and I will thank you to invest this sum in a sterling bill on London or Liverpool, payable to the order of John Weir, and inclose the same in a letter to him, directed as follows: John Weir, Baker, Lamlash, Island of Arran, Scotland. You will also please inclose the letter herewith to the same party. This sum you will place to the debit of my account.

Mr. James M. Wilson, the bearer of this, goes to Mazatlan with a small pack-train, to bring up some goods which I expect have arrived by this steamer. Please have them passed at the custom-house and delivered to Mr. Wilson as speedily as may, so he will not be unnecessarily detained with his mules on expense in Mazatlan.

You will also do me the favor to forward by Mr. Wilson one thousand dollars, ($1,000,) which said sum you will charge to my account. I forward by Mr. Wilson a package of letters and a small package of silver ore, all of which please forward per Wells, Fargo & Co.'s express, charging expenses to my account. I have now on hand fully four hundred tons of ore (400 tons) and am mining over thirty tons per week. The ore of La Luz continues to improve in quantity and quality. I now believe that by the time the mill is completed I will have enough to pay for the entire cost of the mill and improvements.

Your fr'd, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING COMPANY,
Tayoltita, April 6, 1866.

Messrs. ECHEGUREN, QUINTANA & Co., *Mazatlan.*

GENTLEMEN: * * * By the May steamer I will draw for ten thousand dollars, which draft I will forward you in due time. Messrs. Weil & Co., San Francisco, of whom I purchased the tobacco which came by the last steamer, request me to have forwarded to them the land-

ings certificates of this tobacco, to enable them to cancel their bond. * * * Our pile of ore is now increased to fully, if not over, five hundred tons.

Your friend, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, April 10, 1866.

DAVID J. GARTH, ESQ., *New York.*

DEAR SIR: * * * Our ore pile is regularly and steadily increasing. The stock on hand is between 550 and 575 tons. * * * To give you a better idea than I could do by detailing the transaction in this letter, of one of the many difficulties I have to meet and overcome, I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with the matter. * * * I wrote you fully in my last letter, detailing the circumstances of the murder of William Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand, and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men, if the prospect for plunder was sufficient to warrant the risk. When the officers arrested, I had him conveyed to the blacksmith's shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman whom he killed previously, and sentenced to be shot. Before the execution of the sentence, he confessed the murder of Grove, and revealed the names of his two confederates. These two would have been arrested before this but for the expulsion of the Liberals from the country. Now we have to wait for the Imperialists to put their officers in power before we can act any further in the matter. * * * Up to April 1st our ore from La Luz and El Cristo mines—say at that time five hundred tons, four hundred of which was

on the patio—had cost nine thousand dollars. This included the amount paid Castillo for working La Luz from June until we took possession, and the expense of making the new tunnel in El Cristo, or an average of $18 per ton. We have reduced the average to $15, delivered on the patio, and I think a further reduction may be calculated upon. You wrote me for a statement of the books up to the 1st January. This I do not send, for the reason that every thing is in an unfinished state, and it would be impossible for me to render any statement that would give satisfactory information to the Co.; but when the works are completed and I return, I will have a full statement of every account on our books, which shall show the entire cost of mill and buildings, the amount of ore on hand and its cost, together with a statement of the business of the store. In short, a full and complete statement of the whole affair while in my charge. * * *

Your fr'd, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, May 4, 1866.

SENOR DN. ANGEL CASTILLO DE VALLE, *Durango.*

DEAR SIR: I am in receipt of your favor of 24th ult. advising me of your having forwarded the tallow which I had ordered. For your prompt compliance with my request in this case I thank you. Enclosed please find my check on Messrs. Echeguren, Quintana & Co., Mazatlan, in your favor for.....$2,760 59
Add goods furnished Dn. Juan James..... 74 18
" cash furnished same..... 10 00

Total.....$2,844 77

This is the amount of your invoice of January 8th, and which you will please pass to my credit. My clerk in rendering you the account made by Dn. Juan James forgot to add to it the ten dollars which that gentleman and which he will doubtless recollect. Col. J. A. de Lagnel has been sent by the Company in New York to relieve me, which is a source of great satisfaction to me,

as my health has become seriously impaired, rendering it necessary that I leave the country. You will find the Col. a gentleman of intelligence, and I trust your business relations with him will be as pleasant and satisfactory as mine has been to me.

Very truly, your friend, TH. J. BARTHOLOW.

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, May 5, 1866.

COL. J. A. DE LAGNEL.

SIR: In reply to your note of this date I beg to say that I am too unwell to collect up, credit and pass same on the books of the Company the wages due our white employees, but you will find over the name of each employee on the ledger a memorandum of when he commenced work with the rate of wages we are to pay. I will, however, call in to-day and to-morrow all our employees and get them to acknowledge the correctness of money and merchandise charged to them. I enclose a memorandum of outstanding contracts yet to be filled, either partially or wholly. I also enclose a memorandum of the mines, their names, location claimed by the Company. All that we are not now working are under "prorogue" until July, when you should make application through Dn. Angel Castillo de Valle, Durango, for an extension of the prorogue. I also enclose a memorandum of goods and supplies which I think the Company will require to aid its operations during the rainy season. The Company own 12 mules and 10 aparejos. The title to these mules I believe to be good.

With respect, TH. J. BARTHOLOW.

MAZATLAN, MEXICO, 16 *June*, 1866.

W. C. RALSTON,
Cashier Bank of California, San Francisco:

SIR: Enclosed herewith I send duplicate drafts on D. J. Garth, of New York, for fifteen thousand dollars, payable at sight in gold coin. Against this I have drawn

on the Bank of California for the following amounts, viz:

In favor of	Echenique, Peña & Co.....	$12,951 24
"	Sanjierjo, Argeres & Pujol.....	1,318 56
"	Brodie & Co	15 20
"	Edward H. Parker.....	290 00
"	Weaver, Wooster & Co	375 00
		$15,000 00

You will credit me with the current rate of premium, whatever that may be, and advise me of your action by return steamer. Should you deem it requisite, communicate with Mr. Garth by telegraph, as requested in your letter of May. I feel some surprise that I did not hear from you by this steamer. You will perceive an erasure both in this letter and on the draft. I made it to correct an error. Very respectfully, J. A. De Lagnel,

Supt. La. Abra S. M. Co.

List of names of persons at the La Abra Co.'s works, for whom letters from Europe or the United States may arrive: Alfred Bryant, J. Edgar, A. B. Elder, Dan. Sullivan, James Cullins, J. W. Green, J. Keeghan, Richard Honith, Charles E. Norton, Francisco Dominguez, and mail-matter for myself, private or otherwise. N. B.—Please remember to make a list of names of the persons for whom *letters* are sent up by the couriers, and charge opposite each the number of letters sent and account of postage or express charges paid on each account, in order that I may collect the same here. I will further request you to make a close and water-tight package of the letters and seal the same. Very respectfully, &c.,

J. A. De Lagnel, *Supt.*

Messrs. Echenique Pena & Co., *Mazatlan.*

Hacienda de La Adra, Tayoltita, 31 *July*, 1866.

Mr. J. G. Rice, *Supt. Durango S. Mines:*

Dear Sir: I hasten to acknowledge the receipt of your note of the 29th inst., and also of one hundred dollars in silver, paid on account. I enclose herewith a statement

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of your account, as appears by our books, differing from yours a few dollars—in your favor, however. If there should be anything omitted by me, please correct such error and inform me of it. I send you two bottles of mustard as requested—price $1 each. As to the forced voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect. You cannot have failed to notice that the exact half of the whole levy was laid upon you and myself—a fact I brought to the attention of the parties interested. * * *

Yours, truly, J. A. De Lagnel.

Mazatlan, Mexico, 16*th August*, 1866.

D. J. Garth, Esq're, *La Abra S. M. Co.:*

Dear Sir: * * * The ore on hand has been overstated, unintentionally, a fact which I found out on making examination of the books. I have had the large pile of 2d-class ore, about which much doubt has arisen, cleaned, and the amount of clean from the rocks, as declared to by the expert Vimpiador, is very small. The ore cleaned from it, however, is very good. The other pile of 1st-class metal is not only better in quality but, in as far as has yet been made manifest, but little waste matter. Besides these, there is a third pile of almost equal amount to either of the others from the El Cristo. * * *

Yours respectfully, J. A. de Lagnel.

Tayoltita, Mexico, 7*th September*, 1866.

D. J. Garth, Esq., *Treasurer La Abra S. M. Co.:*

Dear Sir: As promised, I send you full and complete statements of the liabilities left unsettled by Gen'l Bartholow, and of the moneys received and expended by me, and of the property found at this place at the time of my arrival.

I have already informed you that the Gen'l would not consent to make the inventory of property asked for by me, and it was not done until some weeks after I took possession, I being absent and having no one to do it before a proper assistant arrived,

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It was, however, carefully compiled, and allowance made for the sales between 1st May and the day on which taken. The tools I received myself. You may accept these papers in full confidence, all possible care having been bestowed upon them. * * * As to your remark in reference to borrowing a few thousand upon the strength of good credit in Mazatlan, let me assure you that nothing can be done in that quarter. But little confidence is felt in American mining companies, and the present condition of affairs enhances the doubt entertained. Your company is about the last actually at work, the others having suspended for cause—and waiting for something to turn up. I have asked, and know nothing can be had. * * * As yet the yield of ore from the mines does not fill the measure of our needs for the mills, but I reduce the working force (it being costly) in June, for the sake of keeping down expenses until the mill-work should be complete, or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless. I note your remarks about working rock less rich than that treated by Castillo. In reply, I would inform you that everything that is believed to contain enough to pay for packing down and beneficiating is saved. * * *

I am yours, with respect, J. A. DE LAGNEL.

HACIENDA DE LA ABRA,
Tayoltita, 8 *October*, 1866.

DAVID J. GARTH, ESQ., *Treasurer La Abra S. M. Co.*

DEAR SIR: * * * The work is progressing, the flume is completed, and we to-day, for the first time, let water on to the wheel, in order to dress the face of some pulleys; but the ditch being incomplete, the supply of water, drawn from the arroyo, was wholly inadequate. * * * I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust. * * * I am troubled exceedingly that better success has not attended my efforts; but the rainy season has proved a sore trial to my patience and been a serious drawback. I have striven to meet your wishes

and expectations, and regret that my success has not been commensurate with my efforts to serve you and to discharge my duties. As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in the country longer than next 1st March. * * * I remain yours, with respect,

J. A. DE LAGNEL.

MAZATLAN, 17*th Nov.*, 1866.

D. J. GARTH, ESQ., *Treas'r La Abra S. M. Co.*

DEAR SIR: I have to acknowledge the receipt of your letters of the following dates, viz: 31st July, 10th, 29th, and 30th August, 10th and 20th of September, and letter of introduction, all brought from Mazatlan and delivered to me by Mr. Exall at Camacho, thirty miles from this place, about the 16th or 18th of October. * * * Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation and the proofs at last being developed. Unfortunately, I was unable in Sep. or October to communicate with this place; and, the ready money giving out at the Hacienda, the workmen (not miners) refused to continue and left, thus bringing the ditch work to a standstill. I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly, and am here on the same mission. Yesterday I used every effort with the best houses, beginning with E. Q. & Co., but could effect nothing. * * * In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of seven thousand dollars ($7,000). * * * In all my letters I have written with a view to avoid exciting false hopes and ideas, and think it but right so to do, although I know that a more flattering tone would, perhaps, be more acceptable to many persons. I have done so because of several reasons; first, because it was my desire to avoid giving rise to expectations which might not be realized; and, again, because I did not feel sufficiently familiar with the subject to indulge too freely in comment. As to the circumstances mentioned in your letter, that certain parties had stated that the specimen ore had been "salted" for my especial benefit and

deception, I can only refer you to the mention made of it in one of my letters—I forget which; but that it was done *purposely* is more than I am prepared to say. If I understand the term as used by miners, the facts are not as stated. It is, however, true that, though I requested to have the second-class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use; but I cannot say that it was designedly done. As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial. The mill itself may be pronounced completed, the last touches being given when I left. That there are faults in the planning is evident, but the work had advanced too far to correct it when I took charge. * * * As I have already stated to you, all the mining property is covered by prorogues up to January next. What will be the result of another application I cannot say, but should the worst come to the worst, a force, limited, can be put to work; and this, with the interval of some months before it can be denounced, will, I trust, serve our purpose. The political condition changed quickly and quietly a few days since, the French Imperial forces retiring from this place and going down to San Blas. Their final departure seems nigh, and the ——— are very much elated, of course. As yet no authorities are installed. We are dragging along in the dark and hoping, but not knowing that any advantage will be derived from the change of rule. * * * I remain yours, with respect,

J. A. DE LAGNEL.

HACIENDA DE LA ABRA, 15*th Dec'r.*, 1866.

D. J. GARTH, ESQ.,

Treasurer La Abra S. M. Co., New York.

SIR: Enclosed herewith I send you two papers—one a balance-sheet drawn from Gen. B—'s ledger—the other an exhibit of receipts and expenditures during his administration. * * * First, as to the amount of cash received from the Company by Gen. B. I find that it agrees with the books, provided a necessary correction be made. In deducting the $200 (January premium

from Messrs. Echeguren, Quintana & Co., which is improperly charged to me in the statement) from $102,-172, the remainder is put down as $101,962 instead of $101,972; and, again, in putting in a condensed form the sum with the overdrafts and outstanding debts it is put as $101,902 instead of $101,972.* * * * I trust that the papers forwarded will meet your approval. I remain, sir, yours with respect.

J. A. DE LAGNEL.

MATZALAN, MO., *5th January*, 1867.

MR. J. D. GARTH, *Treasurer La Abra S. M. Co.*

SIR: I hasten to acknowledge the receipt of your three letters of the 1st, 10th and 20th of November, respectively, and in response will endeavor to place you in possession of all the necessary information to enable you to judge of our condition and prospects here. In your last letter—the 20th November—you there inform me that you can meet no further drafts upon you; yet I had already about the 17th November drawn on you, as —for the sum of seven thousand dollars. I wrote to you fully by the same mail and hoped to be able to send the letter *via* Acapulco, and thus reach you before the draft. In this I was disappointed, and my letter having gone *via* San Francisco will reach you at the same time that the draft comes in for payment. I trust that despite what you say you will find some way to satisfy the draft; for if it goes to protest, it will be of incalculable injury to the best interests of the Company. To me the consequences of such a thing would be both mortifying and most embarrassing; but to the Company's interests they would prove far more serious. It is, therefore, that I urge upon your serious consideration the interest at stake, and pray that a prompt settlement be given upon presentation. * * * As to the amount received from cash sales of merchandise it is very small, the number of people about Tayoltita being less than formerly. As those employed by me receive two-thirds of

* The drafts drawn by de Lagnel and paid were as follows: June 16, $15,000; August 16, $10,000; November 18, $7,000; February 5, '67, $7,500. An aggregate of 39,500, which, added to $101,972, gives cash expended by Company $141,472.

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their earnings in goods they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so between a diversity of causes the receipts of cash are very small indeed. * * * Don Juan Castillo is here, will go in time to Durango, and proposes visiting Tayoltita. He called on me and showed me a letter he had received from you in response to one he had written you from Bilboa, Spain. He expresses great interest in the enterprise and its success, but makes no disguise of the fact that he thinks one hundred thousand too much has been spent, that a different plan would have been his, namely, to work with improved battery to perfect the crushing, but to use no other American machinery, to use the arastras and patio as of old. He thinks that the mode, under the circumstances, there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent unless he sees, with his own eyes, good grounds for the investment. American credit is poor, and American success as miners in this country is doubted, I find. * * * The prospect from the mines is not so good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition. Enclosed I send the monthly papers.

Yours respectfully and truly,

J. A. DE LAGNEL, *Supt.*

MAZATLAN, MEXICO, 5 *February*, 1867.

WM. C. RALLSTON, Esq.,
Cashier Bank of California, San Francisco.

SIR: I inclose herewith duplicate draft on D. J. Garth, esq., of New York, for seven thousand five hundred dollars, in your favor. Please place this amount to my credit, as also the premium you may allow, according to ruling rates at date of reception. Against this draft and the balance of four hundred and seventy dollars (being accrued premiums on former drafts) previously to my credit, I have drawn in favor of Echenique, Peña & Co., of this place, for seven thousand nine hundred and seventy dollars. I am, sir, very respectfully, your obedient servant,

J. A. DE LAGNEL, *Sup't La Abra S. M. Co.*

MAZATLAN, *April* 10, 1867.

WM. C. RALLSTON, Esq., *Cashier Bank California.*

SIR: I enclose herewith duplicate drafts for five thousand dollars (gold coin) in your favor against D. J. Garth, esq., of New York. Against this amount I have drawn on your bank in favor of Echenique, Peña & Co. of this place. Please place the above amount, with premiums to my credit, and oblige,

Yours, respectfully, J. A. DE LAGUEL.

TAYOLTITA, DURANGO, MO., *May* 6, 1867.

D. J. GARTH, Esq., *Treasurer La Abra S. M. Co.*

Yours of the 24th April was received some days previous to the departure of Col. de Lagnel, who will no doubt reach New York some time prior to the reception of this. Col. de Lagnel will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make a further mention of them. Since his leaving I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal. A light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since and which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it. Col. de Lagnel will give you an account of the mill and its work, which did not exceed our expectations. * * * Hoping that my next may be of a more cheering nature, I remain yours, with respect,

C. H. EXALL.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New Street, New York, May* 20, 1867.

Mr. CHAS. H. EXALL, *Tayoltita, Mexico.*

DEAR SIR: I wrote as usual by last steamer, which left here on 11th instant. You will see that Col. de Lagnel was expected by the steamer then about due, but he failed to come and we are yet without any advices

from the mines later than 5th February last, dated at Mazatlan. At that date we were advised that everything, after long delay, was about complete and that we might soon look for good results from the enterprise, but that, the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last and was paid by one of the directors of the company, as it was considered that it was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin, when the last steamer arrived, instead of bringing Col. de L. with some fruits of our works, a draft for $5,000, gold, was presented for payment by Lees & Waller, drawn by de Lagnel, favor Bank California, and dated 10th April last, and of which we had not received any notice or advice whatever and have not yet received any. As I had so often and fully advised the superintendent of the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the company will have to be sold out and reorganized. I must again urge you to use all possible dispatch in remitting us bullion and use the greatest possible economy in working. We wish you to give us very full and particular accounts of amount of ore on hand and amount you raise daily; the number of hands employed, cost, &c., and amount crushed, yield, &c., and the cost of beneficiating, and also a regular monthly statement of receipts and expenses. In this we earnestly insist on and hope you will not fail to do it. I expect Col. de Lagnel now daily. With best regards, I remain very truly yours, D. J. GRATH, *Tr.*

(Indorsed:) "D. J. Garth, May 20, '67, to C. H. E."

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OFFICE OF GARTH, FISHER & HARUY, BANKERS,
18 NEW STREET, NEW YORK, *May* 30, 1867.

MR. CHAS. H. EXALL, *Tayoltita, Mexico:*

DEAR SIR: We wrote you on 20th inst., informing you that we had nothing from you or Col. de Lagnel, but that a draft drawn by Col. De L. from Mazatlan, 10th April last, had been presented, and there being no funds on hand and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter, Col. De Lagnel has arrived, and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to be incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. De Laguel expected that Mr. Sundel, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver; if, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. In regard to the working of the ore, I would advise that you don't waste it by running it through the mill when you find that the yield is not satisfactory. I would suggest that you run say 2 to 3 tons of metal through the mill and see what the results are by the pan process, and then take a like amount of same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working. All expenses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible—at any rate, no further aid can be rendered from here, and what you need must come from the resources you now have. Neither must

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you run into debt, cut down expenses to amount you can realize from the mines. I cannot yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done to pay off the debts here, now pressing on the company. For the present, all I can say is that the whole matter is with you; take care of the interests and property of the company; don't get it involved in debt, and advise us fully of what you are doing. Everything here excessively depressed and dull.

With best regards to Mr. Cullins and yourself, I am, very truly yours. D. J. GARTH.

You must be very careful in regard to the tailings or "pulvios," and try and save them, and not let anything be wasted, for future use.

[Endorsed—"David J. Garth. *To C. H. Exall.* May 30, '67."]

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 *New street, New York, June* 10, 1867.

Mr. CHAS. H. EXALL, *Tayoltita, Mexico:*

DEAR SIR: I had this pleasure on 30th ult., sending the letter by a gentleman going direct to Mazatlan. We have not heard from you since Col. De Laguel left Mexico, but hope that you are well and getting along as well as could be expected. The account that Col. De L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes. We trust, however, that a fuller examination will show better results. We have in previous letters to you and to De Laguel so fully informed you of the condition of affairs here, that it is hardly necessary to say anything further on that subject. There is no money in the treasury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by De L. on 10th April, was returned protested, and I hope you will be able to take it up when it gets back, promptly. Everything now depends upon you, and to your judgment, energy, prudence, and good management of the resources in your hands, and we hope you will be able to command success.

Very respectfully and truly yours, D. J. GARTH, *Tr.*

(Endorsed:) "D. J. Garth to C. H. E.," June 10, '67.

MAZATLAN, *June* 11, 1867.

D. J. GARTH, Esq., *Treasurer La Abra S. M. Co.:*

DEAR SIR: * * * My principal reason for writing now is to inform you that I will be compelled to draw on you by this steamer for three thousand ($3,000) dollars. * * * Hoping this will not inconvenience you,

I remain, respectfully, C. H. EXALL,
Actg Supt. L. A. S. M. Co.

OFFICE OF GARTH, FISHER & HARDY,
BANKERS, 18 NEW STREET,
New York, July 10, 1867.

Care ECHENIQUE, PENA & Co., *Mazatlan.*

MR. CHAS. H. EXALL, *Tayoltita, Mexico.*

DEAR SIR: I had this pleasure on 30th May and 10th June last, after the return of Col. de Lagnel and we had learned something of the condition of affairs in Mexico. In these, as well as in preceding letters, you were fully advised of the condition of the Company here; that there had been no funds in the treasury for a long time; that appeals had been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the Company were anxious for its return, and refused to make any further payments; and that the draft for $5,000 drawn on me as treasurer by Col. de Laguel, on 10th April last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that, by that time, you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. We have since received your letters of the 6th May, from the mines, and 17th May, from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. I am glad to hear that you are taking

out *rich* metal, and hope it will turn out *valuable*. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts, and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the Hacienda there must be a considerable am'nt of rich metal, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course, you keep an accurate amount of the cost, not only of raising and transporting of the ore to the mill, but of the cost of crushing it and converting into coin or bullion; and, as it is a matter of simple calculation, you can soon see if it will pay, or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point, and wish you to give careful attention to it; and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, am't of ore raised and its value, and the results after beneficiating, etc. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view. Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but, at the same time, be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States, and as an American company duly organized and prosecut-

ing a legitimate business under the protection of the law, and our rights will be protected by our Government. We wish you also to ascertain and fix definitely the extent & boundaries of our properties, mines, Hacienda, etc., etc., and to send us a copy of same. I suppose Castillo has furnished such an one, or, if not, that he will do so. Please attend to this, as it may become important some time or other. We hope the next advises from you will be favorable, and to learn that you will soon send us plenty of money to pay off the debts here. With best regards to Messrs. Cullins and Sloan, as well as to yourself, I remain, y'rs, truly,

D. J. GARTH, *Tr.*

(Endorsed: "David J. Garth, July 10, '67.")
"To C. H. E."

[Translation.]

TAYOLTITA, *July* 11, 1867.

TO THE GEFE POLITICO OF SAN DIMAS.

DEAR SIR: Your letter of the 10th inst. was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about this affair. I am your most humble servant,

CHARLES H. EXALL, *Supt. La Abra S. M. Co.*

HACIENDA LA ABRA, *July* 13, 1867.

D. J. GARTH, Esq.,
Treasurer La Abra S. M. Co., 18 *New street, N. Y.*

DEAR SIR: * * * I am sorry that Col. d. L's draft could not be paid, as its being protested, I fear,

will injure the interests of the Co. both in Mazatlan and San Francisco. All your previous letters to me were to follow out the instructions given to Col. de L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the rainy season. Col. de L. left me with only moderate means to buy these various supplies, pay't of sundry bills which were coming due, and pay of the workmen who had accounts outstanding of three, four and six months' standing, (As I had the money in Mazatlan, deposited with E. P. & Co., and getting nothing for it, I settled up all time-bills, getting a discount.) After these various amounts were considered, I saw that it was impossible to meet all obligations and have a sufficient surplus to keep me in operation during the rainy season, as it was absolutely necessary to have at the hacienda from —— to fifteen hundred dollars. Under these circumstances, I drew on you through B. of Cal. for $3,000. E. P. & Co., who have always bought Col. de L's drafts on you, did not want money on San F'co. I found it impossible to sell it to other houses, so sent it to Mr. Ralston, cashier B'k of Cal., with request to send me negotiable paper for it. This paper I could, of course, easily dispose of anywhere. On the strength of this draft, I bought my goods, my bill at E. P. & Co.'s, amounting to $577.38—4 mos. The other bills, amounting to $728.34, I bought for cash, which E. P. & Co. settled. In addition to this, I borrowed $500 cash to take with me to the hacienda. Before leaving Mazatlan, I made other purchases, making the whole amount which E. P. & Co. settled for, (including the $500 borrowed,) $1,252.94 cash. This cash was lent and paid for me on my promise of payment by return steamer, which is the one now coming. I informed you by an early opportunity of my intention to draw. I had not then heard from you in reference to Col. de L.'s draft; did not know it had been protested, which, if I had known, I certainly would not have drawn. My draft will, of course, be returned by coming steamer. I wrote you fully when I was down last, informing you of my doings. When I received your letter by Sr. M., I was working the Abra, Cristo, Luz, Arrayan—a small force in each. Seeing the decided manner in which all

further aid for the present was refused, and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——, (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain and a little spat with the officials, which was gotten through without much trouble,) I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. They said nothing offensive, but of course were disappointed, as it would be a bad time for them to be without work—in the rainy season. Since stopping off, we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arrayan, and getting out some good metal. I hope to be able to keep them there. By doing so, it will secure the mines in every way. Four miners is all that they had there before. Mr. Cullins thinks that in a short time he will be able to get more men to work in the other mines. We can do better with them when they are a little hungry. Working in this way is much better and attended with the least expense. They are provisioned for a week, and charged with what they get. What metal they get out is assayed. If it assays an amount worth working, we pay them in goods, (a little money now and then), about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way, we get the metal out free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them. As long as the men will work in this way, (which they will not do unless they get good metal,) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way, will pay for packing down from the mountains. I am privileged by the mining-laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of this privilege. * * *

Respectfully, CHARLES H. EXALL.

OFFICE OF GARTH, FISHER & HARDY, BANKERS,
18 NEW STREET, NEW YORK, *July 20th*, 1867.

MR. CHAS. H. EXALL, *Tayoltita, Mexico:*

DR. SIR: The steamer is just starting & I have only time to say that your letter of the 11th, by private hand, has been rec'd advising us that you had drawn on me for $3,000, gold. In former letters you will have learned the condition of things here, and that there is no money to pay same and that former dr'ft of De Laguel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so. I have no time to-day to write more, but hope you are getting on well; will write you fully as requested. I enclose several letters from y'r friend. Y'rs truly,

D. J. GARTH, *Tr.*

[Endorsed—" David J. Garth, July 20, 1867.]

MAZATLAN, *Aug. 5*, 1867.

D. J. GARTH, Esq.,
Treasurer of La Abra S. M. Co., 18 *New st., New York:*

DEAR SIR: I am just in receipt of yours of 10 and 20 of May and 10 of June. I wrote you from Hacienda a day previous to my departure from Durango. I was, the day before, quite sick with chills and fever, and at the time of writing very much unwell; fear my letter was very imperfect and unsatisfactory, which please excuse. The trip to Durango consumed 11 days—the weather severe and roads rough. I enclose statement with remarks. When I returned from Durango I learned that the second day after my leaving the river had swollen to such an extent that it carried away a considerable portion of the dam and a portion of the ditch adjoining the dam. Also the immense rush of water down the Arroyo had done considerable to ditch, overflowing it and washing a large quantity of dirt in it. This mishap occasioned the stoppage of the mill. The ditch was

cleaned out, and as the water in the river was too high to do anything to the dam, had to get water from Arroyo, which is sufficient to keep the mill in operation, and I hope it will last during the rainy season. This occurrence kept the mill idle for 8 days. The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work on then I know not. There is, of course, some little good ore in the great heaps on the Patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 20 men by carga, pay them not over $1.00 per week in cash. I *must* give them some little money. These are working in the Arroyan and on the dump of the Rosario. The Cristo is now idle, also La Luz and Abra. I can get no metal from them which will pay. The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men and see what can be found. No further prorogues will be given, and although I have no fear of anyone denouncing the mines, I must not leave unprotected. The ore which is now being gotten out will average per assays about $75 per ton, but it comes in small quantities. The returns I brought from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of the returns from present run will have to be paid them. I hope to be able to settle up all the indebtedness of the company, both here and at the mines. E. P. & Co. are the only ones I am owing here.

Col de L.'s draft was presented to me here on yesterday. I told them I could do nothing. My draft, which I spoke of in my last was returned. Please inform me what can or will be done. I can't see very far ahead in money matters. Can count on nothing positive from the ores now on hand. I leave to-morrow for the mines. All have been frequently quite sick. I manage to keep up better than the rest. Hoping that this and my last together will give you the information you require,

I remain, respectfully, CHARLES H. EXALL,
Acting Sup't La Abra S. M. Co.

Acct. of run by mill from 27th May to 13th July, inclusive:

Amount of rock crushed		89 tons, 1,676 lbs.	
Producing 131 marcos 5 ounces refined silver, yielding at mint	$1,672 29		
Less mint expenses	147 47		
			$1,525 82
Cost of chemicals used	665 81		
Labor	380 54		
Wood, 75 varas, 62 cents	59 38		
			1,105 73
			$420 09

During the above time the mill was stopped for three days to enlarge pulleys to settlers. By enlarging these pulleys it gives greater rapidity and its working is greatly improved. Three days, from the 10 to 13 July, were consumed in cleaning up. After 7th June there was not water enough to run both battery and pans, and at this season, a month previous to the rainy season, the water in the river is very low, which of course reduces the capacity of the mill just one-half. The mill works well, the battery particularly. The great objection to the whole arrangement is its having been put too low down in the ground, thereby losing a fall of at least eight feet, which if we had would be of the greatest advantage, as we then could put sluices wherever they are needed and run the crushed ore to any part of the mill and patio. It would also enable us to save the tailings, which we now lose. The ore mentioned in statement above is from Cristo mine, which is of the lot Col. de L. mill worked a little of. The assays which were made from samples taken from battery sluices, and which were made daily, vary in value; the greatest number gave $13.50 per ton (silver), some others went $20, and again $22.50, but none over. The ore at the bottom of the pile seemed a little better than that on top. I have built a much larger battery-tank, which catches all that wastes from the battery, which before was to a great extent lost. This I work over. The oven, which has been completed, I have not yet used, as I have worked no metal which

required roasting. The boiler is a very indifferent one, very old style and consumes a great amount of fuel but answers its purpose. The yield from the 89 tons in statement is small and the time great, when we compare results, expenses, &c., but take in consideration that ore of ten times the value of this would require no greater expenditure, no greater cost to work, &c. I am at present working some ore; will send a like statement at the end of the run or when the ore is exhausted.

CHARLES H. EXALL.

MAZATLAN, MEXICO, *August* 5, 1867.

MAZATLAN, MO., *Oct'r* 6, 1867.

D. J. GARTH, ESQ., *Treasurer La Abra S. M. Co.*, 18 *New Street, N. Y.*

By this steamer I am in receipt of yours of 10 and 20 of July and 10 of August. I was much disappointed that my urgent demands for money was not favorably answered. I have complied with the requests in your various letters in reference to giving you exact information concerning affairs here. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand—that is now entirely exhausted. I have neither money, stock or credit. The latter I would not use even if I had it, as in this country it is an individual obligation and no Co. affair. Now, you must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off debts of the concern. I have worked as economically as possible, and have cut down expenses to the lowest point. Mr. Cullins speaks of leaving in a short time. Mr. Slone is still here, but doing nothing; he is awaiting news from the Co., expecting that they may decide to run the tunnel when he would be able to get employment. If Mr. Cullins leaves I don't think that I will employ any one else. Mr. Slone I should like to retain, but as I am unable to give any guarantee for the payment of wages fear to do so. Am owing him and the others. These payments *must* be made. I am working the mines with as few hands as possible.

What little good metal is taken out amounts to almost nothing. The $5,000 draft of De Lagnel's was sent to a house in this place to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal and I had much difficulty in warding it off. The concern to whom the draft was sent showed me his instructions, and also the original draft. Fortunately for the Co. there was a flaw in the draft. De Lagnel failed to sign his name as Supt. L. A. S. M. Co.; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property here, as the Company were not obliged to pay the draft. I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz on the patio won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparos are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing merely to hold them; this I can do no longer, as I have nothing to give the men for their labor and must now take the chances and leave the mines unprotected. You ask for boundaries of mines, hacienda, &c. On this point I can give you no information, as these matters are of course to be found in the original titles and I have no papers in reference to it. Recently the Government has ordered that all holders and workers of mines must present to the authorities the title deeds of said mines. The prefect in San Dimas sent for the titles of the La Abra Co.'s mines. I informed him that they were in N. Y. He gave me four months to produce them. One month of the time has passed, so you will please send immediately all the titles to the mines or certified copies of them. They must be here in the specified time. By last steamer I sent you full statement of business of hacienda, the runnings, returns and expenses of the mill, acc't of ores, &c. I neglected to add forty tons of tieres which were run through and should have been in statement sent, but was overlooked. I am sorry not to be able to send you statement of the months since. On my return from Durango I stopped at the hacienda so short a time before starting for this point

that it was impossible for me to make it up in time for this mail. By next steamer I will send you full statement of past months. The returns from Durango were small. I turned it over to E. P. & Co., as I was owing them. There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent. I hope that I have urged this point sufficiently so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money. I fear that before I can get a reply to this that something may have occurred. Of course Col. De Lagnel informed you the conditions and terms on which I took charge of affairs here, which was the same that he was getting, and if I had known at the time what difficulty I was going to have in procuring means to keep the concern in motion I would have refused on any terms. I am much in need of money, as I wish to use it here. I will in a month or so draw on you through Wells, Fargo & Co., San Francisco, for $1,500. Please inform me by earliest opportunity that you will meet the draft. My health is very bad and I fear is much injured since being here. Another summer I could not stand—hope you will soon send some one to relieve me. Cullins and all the others have been or are now sick. The weather has been almost melting. Please have mailed the enclosed letters. I hope that before this reaches you that some steps will have been taken to procure means to operate with. Trusting that you are in good health, I remain respectfully,

CHARLES H. EXALL, *Act. Supt. L. A. S. M. Co.*

NEW YORK, *Octo.* 10th, 1867.

Mr. CHAS. H. EXALL, *Tayoltita, Mexico:*

DEAR SIR: Since ours of 30 Sept., we have yours of 5th August, from Mazatlan, and note contents. We are deeply pained to find that you are not well, and that and are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources

of the mines & mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of Cal. has again sent Col. De Lagnel's draft for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it. I enclose letter from your friend.

Very truly yours, D. J. GARTH, *Treas'r.*

[Endorsed "David J. Garth, 10th Oct., 1867."

MAZATLAN, *Nov.* 17, 1867.

D. J. GARTH, Esq.,

Treasurer La Abra S. M. Co., New York:

DEAR SIR: Yours of the 30th Sept. is just in hand, and, contrary to my expectation, contains nothing of an encouraging nature. I expected, after having previously written so positively in reference to the critical state of affairs with me, that you would have sent me by this mail some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring, and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th inst.—since my leaving Tayoltita, (I left there on the 10th for this point)—intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of next steamer, (don't know as yet if I will succeed in getting him to delay,) when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once. Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men which are now at work in them. This I am compelled to do, as I have no money

and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement. In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Mr. Elder, Sloan, and Cullins, if paid off, will sail for San Francisco. If not paid off, suit will be commenced, and as I have no means to defend the case, fear it will go against me. When these parties leave the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, whom I am also owing, and I away much of the time. What you intend doing must be done promptly. Please send me Mr. Cullins' contract with you. The political state of the country just now is rather discouraging. I hope by the time this reaches you will have rec'd statement sent. Everything at mines is as it was when I last wrote, only more gloomy in appearance on ac't of not being able to employ the people and put things in operation. Please do something immediately and inform me as speedily as possible.

Yours, most respectf'y, CHARLES H. EXALL,
Act'g Sup't La Abra S. M. Co.

Please forward enclosed letters.

MAZATLAN, MO., *Dec.* 18, 1867.

D. J. GARTH, Esq.

DEAR SIR: I arrived here a few days since. Received by steamer yours of Oct. 10, informing me of your inability to send me the means to operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me and begged that you would do something. Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money. Mr. Cullins, who I informed you in a previous letter would leave, insisted upon doing so by this steamer. He demands a settlement, otherwise he will immediately commence suit, and had made preparations to do so. To keep the matter from the courts, I was compelled to borrow money to pay him off. The balance due him and the amount I had to borrow was $1,492. He has troubled

me a great deal—has been exceedingly unreasonable. On yesterday the ag't of the B'k of Cal. informed me that he had rec'd the draft by the last steamer (which arrived a few days ago) and would immediately commence legal proceedings, and sent the draft on to the courts here. I am utterly unable to oppose them. First, I have no means, and, again, I am not your agent here, never having received a power of att'y from you, which will be necessary, for I cannot act in these courts without it. The Bank of Cal. ——, and will do something to recover the amount of the draft, and before the amount is doubled by the expenses, for God's sake telegraph to and pay them. Matters of this nature once getting into the courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything there. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter, pay them before things go further. My position is extremely embarrassing, and I know not what to do and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly and consider my circumstances and believe I am doing the best for your interests. I am doing nothing at the mines and have only one person left with me. Please attend to this matter promptly. I am writing very hurriedly, as there is a war steamer just leaving for San Francisco, which will arrive there some days prior to the regular mail. I leave for the mines in a few hours. Attend to this at once and telegraph me. I remain your ob't serv't, CHARLES H. EXALL.

SAN DIMAS, DURANGO, MEX., *Dec.* 25, 1867.

This day received of Sr. D. Miguel Laveaga a draft of five thousand dolls. ($5,000), drawn by J. A. de Lagnel on D. J. Garth, esq're, New York. Not being in any manner connected with or responsible for said draft of $5,000, I refuse to recognize it. Respectfully,

CHARLES H. EXALL, *Adm'r La Abra S M. Co.*

MAZATLAN, *Jan'y* 24, 1868.

D. J. GARTH, Esq're, *Treasurer La Abra S. M. Co.*

DEAR SIR: I came down to meet steamer from San Francisco, in hopes of receiving letters from you, but received none, and now being entirely out of funds and stock and being sued by the ag'ts from B'k of California for the payment, have to let things take their own course, as I am unable to protect your interests here. In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless and will simply state that I am doing nothing whatever at the mines and cannot until I receive money to operate with. I haven't means to protest now and they are liable to be denounced at any moment. Some months since I wrote you for titles. The government demanded them. They have not been received. By December steamer I sent you a telegram from San Francisco. No reply. The parties I sent the dispatch to in S. F'co sent it on to New York. I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco. Will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of Cal. from getting possession. Thus far have succeeded, but can prevent them no longer and fear they will eventually have things their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer. I have only one man with me now; am compelled to keep some one. Please telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in N. Y. and sent to me whether or not I may have left. Please let me know your intentions.

Respectfully, CHARLES H. EXALL.

Please forward inclosed letters.

TAYOLTITA, *Feb'y* 21, 1868.

Mr. JAMES GRANGER.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco and probably for New

York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property. You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interest of the company. This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf. Very respectfully,

CHAS. H. EXALL, *Adm'r La Abra S. M. Co.*

NEW YORK, *May 8th*, 1868.

DEAR GRANGER: Yours from Tayoltita of March 25 reached me day before yesterday; was much pleased to hear from you, and to know that you were getting along in some shape. I wrote to you from San Francisco just previous to sailing for this point, giving you a statement of my doings while there, so no need of repetition. As I stated in my letter to you, I came by the Opposition route across the Isthmus—Walker's old ground—and, while crossing it, I can safely say I had the damn'est, roughest time imaginable. It was awful low water in the small streams or rivers; heavy rains while on the journey; in water pushing flats, &c., &c. It was an indescribable mean and rough trip. We were four days getting across; got pretty good sea steamer on this side; 27 days from San Francisco to N. Y. Of course, on the first day of my arrival here, I saw nothing of the Company. The day after, I went down and saw Garth; had a long talk concerning affairs, and, contrary to our expectations, gave me no satisfaction; didn't seem to intend to do anything more. I have seen him several times, but have got nothing from him of an encouraging nature; he seems disgusted with the enterprise, and, so far as regards himself, intends to do nothing more, or have nothing more to do with it. Well, I then went to see one of the stockholders and directors, who talked a little better. It seems there is a party here who has been after Garth and this stockholder mentioned, to sell the mines to a wealthy party who are now successfully mining in California. This party have been after these gentlemen repeatedly, endeavoring to get them to sell the mines, &c., they bearing all expense and giving the present

Company so much stock. This party are not now in New York. One of them has gone to hunt up De Lagnel to get all possible information concerning Tayoltita, &c. In addition, the party will pay up all debts against the Company. From what this director tells me, they seem in earnest. They are not aware of my arrival; have been written to, informing them of the fact, and I will probably be brought in contact with them before long. Now, as you and I are the principal creditors—I haven't been able to get a cent from them, "the Company"—and the thing being in my hands, if this party intend buying, we can and will make a good thing out of it. Those of the Company I have seen have turned the affairs to me; so, in case anything can be done with this party, don't be afraid of your interests—all accounts at the mines are under my control—as yours will be looked to in conjunction with mine. All now depends in what can be done with this party, and more information concerning it I am unable to give until seeing them. I have informed the Company that they shall do nothing until you and I were paid, which seemed satisfactory. This will be mailed by steamer of 11th inst. If you do not hear from me by steamer of 21st, it will be on account of affairs not having been concluded. You may certainly expect a letter by mail of 1st June; hope, previous to that time, that I may have made satisfactory arrangements, &c. Just at this crisis it will be necessary to keep all secure at the mines. In my conversation with these gentlemen, I will represent things in a secure state; if possible, get prorogas on mines where times are expiring; keep them secure if possible in some way; don't be uneasy or spend a thought in Cullins or B'k. of Cal.; find out in a quiet way when and where you may dispose of the remaining property, but do not sell until you hear again from me. I hope to be able to make something for ourselves out of this thing—at present we are in the dark, but I will soon know something definite and will immediately write you. In case this party should purchase I will accompany them to the mines. You can extend Ariza's "Guarisimey" privilege "if he wants it" another 3, 4 or 6 mos.; don't extend Guadalupe's more than a month at a time; do the best you can under the circumstances

using your own judgment, being guided to an extent by what I have written. * * * I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable. I expected to be paid up here; its not having been done plays the devil with my arrangements. Since my arrival here the weather has been exceedingly unpleasant, raining nearly all the time. N. Y. is exceedingly dull, business much depressed, the political state of affairs of course has everything to do with it. Johnson is not yet impeached, and heavy odds are bet in Washington against the impeachment. Many changes have taken place since I was here last. Old friends I left bookkeepers, clerks, &c., many are now doing business on their own accounts, but have a hard time of it on account of the state of affairs here. To-morrow I intend to take a run down to Old Va. to see my folks. My mother and a sister are in exceedingly ill health; expect to be gone from here only a few days. I have now written all that bears on the important subject with us. Would write more definite, but as you see I am now unable to do so. I will write immediately on receipt of news. Let me hear from you *every* opportunity and direct via Acapulco, as they get here sooner than by 'Frisco. I will send this that way. My kind regards to Slone "Manuelitta" —I think that's the way to spell the name; Guadulupe's family generally, Cecilia and the Tayoltitians generally. How are you and Cecilia now? Hoping that this may find you well and getting enough to eat, I remain as ever your friend,

CHARLES H. EXALL.

The contents of this keep to yourself.

NEW YORK, *June* 15, 1868.

DEAR GRANGER: In my letter written in May, I informed you of the possibility of my being able to do something with the Abra affairs through other parties. (The old Company manifest the utmost indifference regarding or in reference to everything belonging to or connected with their affairs in Mexico, and have virtually given everything into my hands.) I also informed

you I would communicate with you by mail of the 1st of June, giving you something definite. This I was unable to do, which will show to you by reasons which I will give. After my arrival here, I was informed that some parties had been here consulting with one of the stockholders in reference to purchasing their affairs in Tayoltita. This party, on my arrival, was in Philadelphia; so I was unable to see them. After remaining here some eight or ten days awaiting them, I went to Va., remained there some days, when I was informed of the arrival in N. Y. of the parties above mentioned. I hurried on immediately; it was then too late to write by 1st of June mail. Since being here, I have seen these people daily, and have given them every information which would tend to make them think favorably of the property—given statements, accounts, inventories, indebtedness, &c., &c., besides speaking as favorably of the property as possible. The prime mover in the affair is a man who knows a good deal concerning the property, and who expects, (if he succeeds in organizing a Co.,) to get a position at the mines. This man has friends who live here; and in Philadelphia he is trying to induce them to enter into the enterprise and form a Co., and from what I gather from him, he has to an extent succeeded, but has not yet come to final terms.) The proposition of this Co. that is to be formed, is, to pay off you, and I to start with and give a certain interest to the old Co. (The old *Company refuses to pay us our dues, and we are totally unable to recover anything from them.*) I have given these parties a condensed summary of accounts of La Abra S. M. Co. I enclose a copy. You will see it *does not* accord with the books, but I give it this way, as requested by the party who is endeavoring to start the Co. An inventory of stock, as nearly as I could recollect, endeavoring not to go over the amount which I supposed on hand. I enclosed a copy—liabilities, also inventory of tools and material, as given by De Lagnel in Apl., 1867. The one I gave them is a copy of the one De Lagnel brought home with him, and of which *you have* copy at hacienda. It is exactly like his, with these exceptions: One silver-mounted saddle, $35; 3 Cal. saddles, $30, and in place of 10 mules @ $600, I put 4@60=$240. With exceptions, it is exactly like the list

De Lagnel brought on. My object in leaving these items out was on act. of some not being there, and others for our own uses, which I will hereafter mention. I do not send a copy of this last list, as there is or was one at the hacienda. It is necessary, as near as possible, that in event of this party taking hold of the works, that these things should be there as represented, and show for themselves in event of parties being sent out to investigate. The mine which they think most of, and will work, and on which the Co. is formed, "if it is formed," is the La Abra. So you see the great necessity of keeping that mine, as well as the rest, protected. Use your best judgment in affairs, then, keeping things in such shape as will advance the interest of affairs. Make the inducement as great as possible to induce parties to take hold; and in case any one should be sent out, or you written to, let your statements correspond with mine as regards stock. If possible, let them go beyond mine. The indebtedness of the Co. to us, I have represented to these parties, as being to Jas. Granger, $2,850.00; to C. H. Exall, $5,113.32; Bank of Cal., $5,000. The statement regarding your account and mine, as represented, is over and above any and everything which we have gotten from the Co. To be a greater inducement to these parties to purchase, and let them see I had confidence in the mines, at their request, I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent in stock of $850. This, I hope, will meet with your approval. Should anything occur, let your statements accord with mine. These parties leave for Philadelphia in a day or two, and will be able to report definitely in a week or two, when I will write you immediately, giving you all points in detail. I should not like these parties to come in contact with Green, Martin, or any one who would prejudice them, &c. If we can succeed, as I have stated here, we will be doing well as things are situated. Send me, as soon as possible, power to act for you. I can imagine your feelings away out in that damned gloomy place, and truly sympathize with you, and doing all in my power to get you away as soon as possible. Affairs here are very dull, little business doing. My health has been very much shaken since coming; suppose it results in change of

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climate. The weather has been, since my arrival, so damp, rainy, and disagreeable. Please do, as far as in your power, as I have suggested. The books, don't let any one see, for reason which will occur to you. My kind regards to Mr. Sloan. De Lagnel is at Fort Hamilton. I have not seen him; understand he will study divinity; don't know with what truth the report. Be assured you shall hear from me at the earliest moment. Kind regards to all. With best wishes and kindest feelings to yourself, I remain your friend,

CHARLES H. EXALL.

Address in care of Ginter & Colquitt, 15 New St., N. Y.

RICHMOND, *July* 18, 1868.

DEAR GRANGER: In my last to you it informed you of the probability of a company being started and on the formation of said company depended on our salaries. Since writing my last I have seen the parties frequently and have had long conversations with them in reference to raising this company and the payment of its indebtedness. The indebtedness to you and me they seemed willing to liquidate and take their chances with the rest. In my previous letter I instructed you in reference to the figures representing your and my amt., keep it as it is but make no entry. This party have gone to work and I believe will succeed in raising a company in a month or two. I have not been with them for the last week. My time has been spent partly in N. York and partly in Va. Was in N. Y. during Dem. Conventions; an immense concourse of people assembled there to take part and see what was going on. The weather during the time was oppressively hot—almost unendurable. I arrived here on the 14th, and as I have nothing to do will remain here a while. In New York and in fact all the States it is excessively dull—a complete stagnation of business. There is one other thing I did some weeks ago as I thought I had best make as sure as possible about getting my pay. It was this: I entered suit against the company, not with the expectation of recovery just yet, but something to fall back on in case this company was not formed; recently there has been a better show for raising the company than ever before. So I just let the

suit remain over in a manner in which it can be revived at any moment. I want you to send me your statement and your power of attorney to act for you in case I found it necessary to continue the suit; if I succeed in recovering for self could probably recover for you. The amount to be sued for is the just amount due me at $3,500 up to time of my demand on them in person for a payment and for my travelling expenses, &c. I will inform you in time to make proper entries, sending a list of expenses, &c. If I have to deal with a new company I want to get out of them all I can; if with the old one, must deal with them strictly. I will in time write you as things develop. By all means keep the mines secure, particularly the Abra—don't allow any one to touch the books or don't give any statements—these affairs are now in our hands, and without satisfaction we must not do ourselves injustice. Before leaving New York the other day, I went down Fort Hamilton to see De Lagnel; he seemed much pleased to meet with me. I spent some hours with him very pleasantly; his wife is a fine woman. De L. is and has been doing nothing since leaving Mexico. He is pretty hard up, I reckon. In fact, there are many men in a like condition, your humble servant included, though not starving. A day or two before leaving New York I heard Bartolow had arrived there—did not see him. What do you think of the nomination of Seymour & Blair? People seem to think that the carrying the Democratic ticket is the only hope of saving the country from the devil. I have great hopes that this party may succeed. I expect to return to New York again in a short time to watch how things get along, and will inform you accordingly. Remember me kindly to Mr. Slone and all friends, and you, dear old fellow, look upon me as ever your true friend.

CHARLES H. EXALL.

Direct us as given in former letter.

(Translation.)

TAYOLTITA, 13 *August*, 1868.

SR. D. REMIGIO ROCHA:

Dear Sir: I have received the communication calling upon this company to pay $52.50 each month for taxes

imposed by the Legislature of the State, and presume it to be correct, but as I am only acting in the absence of the sup't, and as there is no money nor effects to pay this tax, I beg you to wait until the month of November, at which time said sup't is to come, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

SANTIAGO GRANGER.

COURT OF CLAIMS.

THE UNITED STATES
v.
LA ABRA SILVER MINING COMPANY. } No. 17,917.

Order.

In consequence of the death of the Chief Justice, the inability of one of the Judges to sit in the case, and the difference in the minds of the Judges who sat in the former hearing, this case is remanded to the trial calendar to be heard before four Judges when the condition of the bench will permit.

Filed Nov. 30, 1896.

COURT OF CLAIMS.

DECEMBER TERM, 1892.

[Decided June 24, 1897.]

THE UNITED STATES
v.
LA ABRA SILVER MINING COMPANY, GEORGE Ticknor Curtis, John H. Rice, Eugene Jones, Sumner Stow Ely, Cyrus C. Camp executor of the last will and testament of Herman Camp deceased, Ellen V. Camp, The American Security and Trust Company administrator with the will annexed of the estate which was of Samuel C. Pomeroy deceased, Edward S. Hamlin administrator with the will annexed of the estate which was of Thomas W. Bartley deceased, Samuel Shellabarger, Jeremiah M. Wilson, Katie L. Hatch, Charles T. Parry, Joseph Hopkinson, Sterling B. Toney, Henry S. Foote executor of the last will and testament of Henry S. Foote deceased, Frederick P. Stanton, Daniel M. Adams executor of the last will and testament of Alonzo W. Adams, deceased; John W. Burke, executor of the last will and testament of William W. Boyce, deceased; George H. Williams; Crammond Kennedy; and Edward M. Harrington.

In equity No. 17917. Amended Bill.

OPINION.

WELDON, J., delivered the opinion of the court:

On the 4th day of July, 1868, the United States entered into a convention with the Republic of Mexico for the appointment and organization of a commission to adjust and determine such claims of citizens of the United States against the Republic of Mexico and claims of citizens of said Republic against the United States, as had been presented to the Government of either party to said convention for its interposition with the other since February 2, 1848, and which might be presented to the commissioners to be appointed under said convention within eleven months from the day of their first meeting. By the terms of the treaty the awards of the commission, or of the umpire appointed by it, were to have the force of absolute finality and conclusiveness and operate as a settlement of such claims. The treaty was ratified by both parties on the 1st day of February, 1869, and proclaimed by the President of the United States on the 1st day of February, 1869. (15 Stat. L., 679.)

The commissioners appointed by the respective parties held their first meeting on July 31, 1869, and thereafter, in pursuance of the power vested in them, appointed an umpire.

The commissioners and umpire who finally acted upon the claim which is in controversy in this proceeding were Mr. Henry Wadsworth, on behalf of the United States, Señor Don Manuel Maria de Zamacona, on the part of Mexico, and the Right Honorable Edward Thornton, K. C. B., envoy extraordinary and minister plenipotentiary to the United States of Her Majesty the Queen of Great Britain, as umpire. Mr. J. Hubley Ashton appeared as agent of the United States and Mr. Caleb Cushing as agent of Mexico. On or before the 30th of June, 1870, the United States, through their agent, presented to said commissioners appointed as aforesaid 873 claims aggregating the sum of $470,126,613.40, and 144 claims the amounts of which were not stated. The Republic of Mexico, through its agent, presented to the commission 998 claims aggregating the sum of $86,661,891.15. On the 19th of April, 1871, by a further convention, the time in which the commissioners were to decide claims was extended one year, and by further conventions the time was extended to the commissioners and the umpire until the 20th of November, 1876.

Pursuant to the power vested in the commissioners, they made awards to the United States (including those awarded by the decisions of umpires) in the sum of $4,125,622.20, in favor of Mexico in the sum of $150,498.41, and the difference between said amounts was paid by Mexico to the Secretary of State in annual installments, as required by the several treaties aforesaid.

On the 17th of March, 1870, La Abra Silver Mining Company, by its attorneys, gave notice to the United States of the existence of a claim of the company against the Republic of Mexico for the sum of $1,930,000 for alleged damages and losses suffered by it in consequence of outrages and violence committed by the authorities of Mexico against the rights of said company in the years 1867 and 1868; the notice was, by the Secretary of State, referred to said commissioners, and the company on the 14th of June, 1870, filed with the commissioners a memorial in which it is substantially alleged that in the year 1865, under and by act of the legislature of the State of New York, the said company became a body corporate; that said company was chartered for the "purchase of mines and mining, melting, dressing, smelting, buying and selling argentiferous and other ores, minerals, and metals;" that the stockholders were citizens of the United States, the amount of capital stock $300,000, and the existence of the company limited to fifty years; that part of its business, by the terms of its charter, was to be carried on outside said State, to wit, at Tayoltita, in the State of Durango, and in the mineral district of San Dimas, both in the Republic of Mexico; that shortly after said incorporation the company purchased valuable mines and haciendas in the States of Durango and Sinaloa; that said mines purchased as aforesaid in Durango became and were known by the name of La Abra mines; that upon becoming the proprietors of said mines the said company proceeded with all possible dispatch to develop and improve the same; that in the purchase of the mine machinery and property incident to its successful operation the company invested the sum of $303,000, and that as a result of such improvement and expenditure it was getting out of said mines a large amount of rich ore, and were in the act of realizing a profit of $1,000,000 per annum, but it was compelled to abandon said mines by reason of the unfriendly and illegal acts and conduct of the officials

of the Republic of Mexico; that intense prejudice existed in the public mind against all Americans; that such prejudice was intensified by the belief that the United States intended to annex said States to the dominion and territory of the United States; that the agents and servants of said company were arrested without cause and acts of violence committed against the property of the company which were encouraged by the authorities of Mexico; that the servants of the said company, while in the performance of their duty, were intimidated, killed, and driven out by the Mexican people; that the authorities made no effort to protect the property of the company, and that the purpose was to obtain possession and control of said property. It is further alleged that in consequence of such treatment the company was compelled to abandon its mine and other valuable property, which at the time of abandonment was worth to the company $3,000,030.

It is further alleged that at the time of the abandonment as aforesaid the said company was compelled to abandon one thousand tons of ore, worth at the time the sum of $500,000, and which was wholly lost; that the profits of the company, if permitted to work the mines, would have been at the rate of $1,000,000 per annum; that in consideration of the premises the loss to the company is $3,000,030; that the whole amount of the claim belongs to the company; that it has not recovered any indemnity for said claim; that the claim was not presented prior to January 1, 1869, to the Department of State of either Government or to the minister of the United States at Mexico.

Such proceedings in relation to said claim were had as that the same was heard by the commissioners on the memorial and evidence aforesaid on or about the 19th day of May, 1875; after hearing and considering the claim, said commissioners differed in opinion as to the allowance thereof; Commissioner Zamacona delivering his opinion that the claim should be rejected altogether, on the ground that the evidence in support thereof was insufficient, false, and in part procured by fraud, and that it was outweighed by the defensive evidence; and Commissioner Wadsworth delivering his opinion in the words and figures following, to wit:

The company in my opinion is entitled to indemnity for the seizures of its money, supplies, mule trains, and other property by the Mexican armed forces, under command of their officers, undoubtedly for the use of such troops, and for the destruction of the mining property and interests of the company by the various Mexican authorities, civil and military.

The amount of money seized and taken by force, according to the proof, as I read it, was altogether $2,978. The value of the several mule trains and supplies seized and appropriated for the public use I make, say, $75,000. The property and interests destroyed in addition, by the arbitrary, lawless, and malicious acts of the authorities, amounted to a large sum, difficult to estimate, but equal in my judgment to the total investment made by the company less the aggregate of the money, teams, and supplies taken as above stated.

Upon these sums the claimant should have interest in lieu of prospective profits.

* * * * * * *

And thereupon, the claim was referred to Sir Edward Thornton, as umpire, for his decision upon the points of disagreement between the commissioners.

Thereafter, on the 27th day of December, 1875, he decided that the Republic of Mexico should pay, on account of the claim, the sum of $358,791.06, for the expenditures of defendant La Abra Silver Mining Company, with interest on said sum, and the further sum of $100,000

for the value of the unreduced ores alleged to have been extracted from said mines and abandoned by said defendant company, with interest on said last-named sum; and delivered his opinion in substance as follows:

LA ABRA MINING COMPANY *v.* MEXICO, No. 489.

AWARD OF THE UMPIRE.

With reference to the case of "*La Abra Silver Mining Company* v. *Mexico*," No. 489, the umpire is fully satisfied and can not doubt that the company is entitled to be considered a corporation, or company of citizens of the United States, in accordance with the terms of the convention of July 4, 1868, having been duly chartered in conformity with the laws of the State of New York.

* * * * * * *

The evidence on the part of the claimants is, in the umpire's opinion, of great weight; the witnesses are, for the most part, highly respectable and men of intelligence, and their testimony bears the impress of truth. Notwithstanding what is stated to the contrary by the witnesses produced by the defense, the umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise. These facts are not, in the umpire's opinion, at all refuted or even weakened by the evidence submitted by the defense; on the contrary, he believes that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and finding his efforts in vain he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that, when so determined a spirit of hostility on the part of the local authorities (one of whom was the jefe politico, who wielded great power) and so much indifference by the State government were displayed toward the claimants, it would have been of any avail to appeal to the court of justice would be puerile. In short, the umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.

* * * * * * *

A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested; they may be greater or less or none at all, and there may be even great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business and upon the amount of the ores reduced and of those extracted and deposited at the reduction works is a further compensation which, in the opinion of the umpire, that Government ought to pay.

The evidence of George C. Collins, with regard to the amount invested, is clear and straightforward. He states it to be—

From subscriptions and sales of stock	$235,000.00
Lent and advanced	64,291.06
Due for rent, expenses, salaries, law expenses	42,500.00
	341,791.06

Any so-called "forced loans" and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan; the latter should be recovered by the proper authorities at the headquarters of the company, and should be in the same proportion as that imposed upon all the inhabitants of

the country. The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations can not proceed. To the above-mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores.

The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well regulated a business as the umpire believes that it really was he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction. The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore must necessarily be vague and uncertain, and that of its average value still more so. Still, the umpire is strongly of opinion that claimants are entitled to an award upon this portion of the claim.

He will put it at $100,000. It is possible that it is much less than the real value of the ores, but in the absence of sufficient documentary proof, and considering the fact that the expenses of reduction are great and sometimes even much greater than is anticipated, he does not think that he would be justified in making a higher award. Neither should interest be allowed on this amount so soon as on the others, for the reduction of the ores would have taken time—say a year. It is not shown that the company had received any dividends before the period of the forced abandonment of the mines, about March 20, 1868. Neither ought interest to be awarded before that date.

The umpire therefore awards that there be paid by the Mexican Government, on account of the above-mentioned claim, the sum of three hundred and fifty-eight thousand seven hundred and ninety-one Mexican gold dollars and six cents ($358,791.06), with an annual interest of 6 per cent from March 20, 1868, to the date of the final award; and, further, the sum of one hundred thousand Mexican gold dollars ($100,000), with the same interest, from March 20, 1869, to the said date of the final award.

EDW. THORNTON.

Thereafter, on the 29th day of January, 1876, and the 19th day of September, 1876, Mr. Avila, agent for the Republic of Mexico, filed with the umpire a motion for a rehearing of the claim, on the grounds set forth in the opinion of Mr. Zamacona, commissioner, as aforesaid, and on the further ground that the allowance of $100,000 with interest on the value of unreduced ores was invalid, because no allowance for the ores had been made by Mr. Wadsworth, commissioner, and the question of such allowance had not been referred to the umpire. But the umpire, on the 20th day of October, 1876, denied the motion for rehearing, and on the 20th day of November, 1876, the functions of the umpire terminated, as provided by the convention of April 29, 1876, aforesaid. By a decision of the umpire, dated July 31, 1876, that date was fixed as the date to which interest on all claims was to be computed, therefore the award on the claim of the defendant company, including interest, amounted to $683,041.32.

In the year 1877 the authorities of the Republic of Mexico were advised, as it is alleged, that certain testimony offered on the part of the company was false, and procured by use of money in the subornation of witnesses; and in that year were further informed that since the proceeding before the commissioners important and material testimony had been discovered, which, if presented to the commissioners and umpire, would have changed the result of the examination of the claim. On the 18th June, 1878, Congress passed an act, chapter 262 (20 Stat. L., 144), directing the distribution of the fund paid by Mexico under the decree and

judgment of the commission, but authorized the President to investigate any charges of fraud presented by the Mexican Government with respect to the claim of said mining company; and if in the opinion of the President "the honor of the United States, the principles of public law, or considerations of justice and equity required that the award in the case of said mining company should be opened and the case retried, it should be lawful to withhold payment of the award to said company until such case should be retried and decided in such manner as the Governments of the United States and Mexico might agree, or Congress should otherwise direct."

On the 8th day of August, 1879, in pursuance of the provisions of said act, the Secretary of State of the United States, in a report to the President, stated that the evidence presented by the Republic of Mexico in said claim brought in grave doubt the truth of the evidence as to the amount of damages, and that the honor of the United States required a further investigation of the claim.

The Secretary further said:

> Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.
>
> Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.
>
> I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point.

The opinion was approved and adopted by the President, and thereafter, on the 3d day of September, 1879, the Secretary further reported to the President:

> The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.
>
> 1. Upon a renewed examination of the matter as laid before me by the Mexican Government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the commission to which, under the provision of the convention, it was presented by this Government.
>
> 2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right, which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.
>
> If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

In pursuance of the recommendation of the Secretary there has been paid to the said mining company and its assigns from time to time, until the amount received by the United States has been diminished to the sum of $403,030.08, which now remains in the possession of the Government.

Because of the alleged fraud against the justice and fairness of the award, an attempt was made to submit the question to a new convention; but the effort failed in consequence of the rejection of the treaty by the Senate. The matter being unadjusted, and a portion of the money still

remaining in the possession of the United States, in December, 1892 (26 Stat. L., p. 409), there was passed and approved an act in substance as follows:

AN ACT to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said mixed commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

* * * * * * *

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said mixed commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud and effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

* * * * * * *

Approved, December 28, 1892.

In pursuance of the provisions and powers of said act, the Attorney-General, on the 30th of March, A. D. 1893, in behalf of the United States, filed a bill of complaint, in which it is substantially alleged, *inter*

alia, that the said company was not compelled by threats or acts of the Mexican officials or people to abandon its mines, as stated in the memorial of the company, as hereinbefore alleged; that said claim was a sheer fabrication, and that every substantial allegation in the memorial contained is false; that the material testimony on which the award was made is and was false; and that the whole of said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices. It is further alleged, that in the year 1877, the Government of Mexico first learned of the existence of a press copy book, containing letters and reports of the various superintendents of said company, and letters from the treasurer of said company, showing that the company was in possession of its mine until August, 1868, and that at said time the said mines were abandoned because of a lack of means on the part of the company, and because the working of the same was unprofitable; that the said company did not quit and abandon said mines because of the illegal act of the officers of Mexico; nor because of the illegal interference of the people of said Government.

It is alleged that the United States has obtained from the Republic of Mexico the said press copy book, affidavits, letters, and documents, and files the same as Exhibit B to said bill. In further extension of the general allegations of the bill the complainant specifically charges as follows:

And your orator says that * * * Julius A. de Lagnel can and will, under oath, testify to the genuineness of the said press copy book and of the letters of the said D. J. Garth, and to other important and material facts respecting the claim of said defendant La Abra Silver Mining Company; and that William P. Tuttle can and will testify to the genuineness of the said letters of the said Charles H. Exall; and that Charles B. Dahlgren, J. F. Gamboa, and J. M. Loaiza can and will testify that the affidavits purporting to have been made by them in support of said claim were false and were obtained by fraudulent practices; and that Frederick Sundell, A. B. Elder, Ramon Hermosillo, Eugenio Somero, and Francisco Torres can and will testify that the material allegations of the said memorial and the material testimony submitted by said defendant company in support of said claim are false. And your orator says that the said documentary evidence and the said witnesses will enable your orator conclusively to show the facts in the fifteenth paragraph of this bill alleged, and also the following, which your orator says are the facts, to wit:

That there was no hostility toward said defendant La Abra Silver Mining Company on the part of Mexican officials or people, but that, on the contrary, their relations to its officers were friendly. That "prorogas," or extensions of title, were frequently granted to said company, and that said company received from officers of the republican army special military protection for its property and for the mule trains belonging to contractors with said company during the war between the Republican Government of Mexico and the Imperialists. * * *

That the superintendent was not imprisoned, but only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint was imposed upon him. That no redress was denied the officers of the company, and no wrongs were inflicted upon them. That the officers of the company paraded their rights as American citizens, and Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty. That when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied, on the 6th day of October, 1867: "There is no difficulties about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must* be sent."

That as early as May, 1867, the said Garth, treasurer of said company, advised Superintendent Exall, at the mines, that no more money could be sent him by said

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company; that a draft on said company for $5,000, drawn by Superintendent De Lagnel through the Bank of California, had been protested; and that the said Exall must pay all expenses from the proceeds of the mines. And in July, 1867, the said Garth wrote the said Exall: "If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned."

That the ores extracted from the said mines were worthless, the only reduction made being of 90 tons in August, 1867, and yielding less than $5 per ton, which was not enough to pay the cost of mining, and the rest being so poor that, according to Exall's report of October 6, 1867, it would not "pay to throw it in the river." That for this reason, if for no other, they were not carried off by Mexicans, and are still at the mines.

* * *

That the said Granger remained in charge of the said mines and property until after August 12, 1868, on which date he advised the Mexican collector of taxes that there were neither money nor effects to pay taxes on said mines, but that the superintendent would return in November, 1868, when the same would be paid.

That the said Exall and the president of the said defendant company, George C. Collins, and the first superintendent of the said defendant company, Thomas J. Bartholow, grossly and fraudulently misstated and exaggerated, in their affidavits made in support of said claim, the amount of money expended by said defendant company in the purchase and operation of its mines and property, and that said defendant company expended in such purchase and operation much less than $200,000.

* * * * * * *

That the investment of said company derived from reduction of its ores was only $420.09, instead of $17,000, as sworn by the said Exall and allowed by said umpire in his said award.

That instead of the unreduced ores extracted by said defendant company and abandoned at its said mines being worth $100,000, as estimated by the said umpire, from conflicting statements of witnesses for said defendant company and allowed by the said umpire in his said award, said ores were absolutely worthless and would not pay the cost of reduction.

That the affidavits of said J. F. Gamboa and said J. M. Loaiza so as aforesaid made in the month of May, 1870, and submitted to said commission by said defendant company, were false, and were procured by bribery and other unlawful means by the agent of said defendant company. And that the affidavit of the said Charles B. Dahlgren, as the same was submitted to said commission by said defendant company, was false, and was not made by the said Dahlgren.

* * * * * * *

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and that they and each of them, on oath, may full, true, direct, and perfect answer make to the matters and things aforesaid, and that as fully as if the same were here again repeated and they thereunto severally interrogated paragraph by paragraph.

And that the said defendants and each and every of them may be compelled to disclose as aforesaid.

And that the said defendants and each and every of them may, by the decree of this honorable court, be forever restrained and enjoined from setting up any claim to any part of said award or of the moneys now, as aforesaid, in possession of your orator.

And that the said award on the claim of the said defendant La Abra Silver Mining Company may, by the decree of this honorable court, be declared to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns.

To the bill the defendants filed a demurrer; but "not confessing all or any of the matters and things in the complainants' bill of complaint alleged." In connection with that reservation as to the truth of the allegations of the bill, the defendants said for cause of demurrer in substance that by the Constitution the subject-matter of the complainants' suit is not within the jurisdiction of this court or of any court of the United States, but is within exclusive control of the Executive Department; that the question whether the award was obtained in whole or in part by fraud, and the question whether the whole or any part of the money should be returned by the President to Mexico, are not competent, fit, or proper to be considered and determined by this court, or by any municipal court, but that the said questions are diplomatic or political, and Congress has

no power to authorize a court to consider said questions as against the powers and discretions appertaining to the Executive Department of the Government of the United States; that the United States have no such interest in the matters alleged in the bill as will enable them to maintain this suit or entitle them to the relief; that the Government of Mexico is the party interested in this suit, and at all times since the discovery of the alleged frauds and injuries set forth in the said bill of complaint, the said Government of Mexico has had a remedy by suit against the alleged wrongdoers in the courts of the United States for the annulment of the said award; that by failing to prosecute such suit the Government of Mexico has been guilty of laches, and has forfeited all rights to relief in equity, and that therefore the United States is not entitled to demand such relief for the benefit or in the interest of Mexico in this suit.

It is further averred that the mixed commission which met under the treaty of July 4, 1868, is recognized by the law of nations and by the Constitution and laws of the United States as a court of exclusive and final jurisdiction, and that an award of such a commission is recognized by the law of nations and by the Constitution and laws of the United States as a judgment of a court belonging to the judicial system of the Government of the United States, and can not be set aside by a municipal court of the United States; that Congress can not grant a new trial in respect to matters determined by arbitration under such a treaty. Such an award can, on the part of the United States, be reopened only by action of the treaty-making power of the Government, and that the question presented by the complainants' bill is *res judicata;* that it appears on the face of the bill that the question is the same question that was tried by the commissioners under the treaty of July 4, 1868; such fraud and fraudulent practices having been charged by the Mexican agent and commissioner at the trial is *res judicata*, and can not be reexamined and redetermined by this honorable court.

It is also alleged that the act of Congress under which this suit is prosecuted is unconstitutional on the further grounds that it assumes and undertakes to direct, control, and bind the courts in adjudicating the question submitted for the final adjudication of the courts named in the act; to receive evidence and apply legal principles to the said adjudication which are erroneous and wholly inadmissible according to law as administered in the courts of the United States in like cases; and such act undertakes to prescribe to the courts what weight and effect they shall give to the evidence, and how the courts shall reach the conclusion that said award was obtained in whole or part through fraud; that inasmuch and because the questions presented by the complainants' bill are of a political and diplomatic nature, and not justiciable, or fit and proper to be considered and finally determined by a municipal court, Congress can not impose upon this honorable court, or upon the Supreme Court of the United States, or upon the judges thereof, the trial and determination of such questions. It is also alleged that the act of Congress is void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval which it ever received being on the 28th of December, A. D. 1892, when Congress was not in session, both Houses of Congress having adjourned on the 22d of December, A. D. 1892, to the 4th of January, A. D. 1893; that

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the complainant's bill of complaint does not set forth facts sufficient to constitute a cause of action or to warrant this honorable court in granting any relief in the premises.

After very elaborate argument and mature consideration by the court, the demurrer was overruled and leave given to the respondents to answer by the first day of July, 1894. In the conclusion of the opinion of the court upon the demurrer it is said:

* * * * * * *

"As there is no express provision for a decree in favor of the defendants, it is objected to the statute that in that particular it is defective in the requirements of a constitutional law.

The scope and purpose of the act is to submit to the decision of the court the question as to whether the award was obtained "by fraud effectuated by means of false swearing or other false and fraudulent practices;" and if the issue is found for the United States, then, as a result of that finding, the President is authorized to return the money, but if the issue is found for the defendants as to the money, or a severable part of the same, then it would be the duty of the Secretary of State to proceed to distribute so much of the award as shall be found not obtained by fraud.

The directions of the statute as to the character of the decree seem to be without doubt, and as the court in the trial of the cause is in the exercise of equity powers, it will find no difficulty in entering such a decree as will carry out the purpose of the statute. If the court should decide that no fraud or fraudulent practice was perpetrated by the company in procuring the award, then the decree should specifically find that fact, which would be in law a finding for the company, and upon that finding in the form of a decree it would be the duty of the Secretary of State to pay the money to the company or its assignees. * * * Assuming as true (as we are authorized by the demurrer) the charges of the bill constituting the alleged fraud, the court overrules the demurrer on the question of jurisdiction and the sufficiency of the bill, and leave is granted respondents to answer or plead if they so desire by the 1st day of July." (29 C. Cls., 432.)

In pursuance of the power given by the decision of the court on the demurrer, the respondent filed an answer on the 31st day of May, A. D. 1894, in which it is admitted that the allegations in the first, second, third, fourth, and fifth paragraphs of the bill are true as therein alleged. The sixth paragraph is admitted with certain qualifications. The seventh is admitted, subject to the denial that the umpire was confined to the points in dispute between the American commissioner and the Mexican, but insists that he had the power to dispose of the claim "according to his views alone."

The respondent further answering admits paragraph eight, in which is alleged the finding and award by the umpire, and substantially admits the allegation in paragraph nine as to the motion for a new trial and the denial of the same, but refers to said motion as a more accurate statement of the grounds on which motion was denied.

The respondent as to the tenth paragraph admits the statements therein contained as to the gist and gravamen of the claim, but denies all allegations of fraud and deception on the part of the company; denies the suppression of proof, papers, and testimony as to the treatment by the

Mexican authorities. The answer alleges that the company's books and papers showing its expenditures and losses were left at Tayoltita, in the jurisdiction of Mexico, with all other property of the company, and came into the possession of Granger, a British subject, who is the same person from whom the Mexican Government, in 1877, is alleged to have recovered certain books and papers, letter-press copy, and original letters; that Granger had been employed by the company as its bookkeeper.

It is further alleged that the price paid for the mine and the expenditures of the company were established by the testimony of witnesses offered by the Mexican Government, as well as by witnesses offered on the part of the defendants.

The respondent admits that in June and August, 1877, the Government of Mexico procured affidavits of Gamboa, Loaiza, Sundall, and Granger and other persons, the press copy book, and alleged original letters, and that the same were forwarded as therein alleged; but denies that the contents of such letter book and letters are correctly set forth in the eleventh paragraph; denies the proof of said affidavits and all statements in alleged copies of Exall letters contained in the press copy book; alleges that said affidavits were procured from said parties by intimidation and duress upon the part of the Mexican Government; that the testimony of said witnesses could have been procured while the claim was pending before the Commission, and that the affidavits are false and untrue. Then follow allegations as to what was done by respondent after the said affidavits were procured and filed in the State Department; but it is not necessary to quote them in this connection.

The respondent admits the allegation of the twelfth paragraph as to the act of Congress, but denies the allegation that the defendants had purposely refrained securing and offering on the trial before the Commission the testimony of Julius A. de Lagnel, who had been one of the superintendents of said mine; admits that the Mexican Government procured the affidavit of De Lagnel, but denies that he identified the press copy book as genuine. Then follow allegations of an affirmative character, going to the gist of this controversy as presented by the material allegations of the bill.

The respondent admits the allegations of the thirteenth paragraph as to the passage of the resolution of the Senate of August 30, 1888, and the report made on the 1st day of March, 1889, by the Committee on Foreign Relations as alleged in said paragraph; but denies the truth and correctness of the statement in the quotation as to the abandonment of the mines by the company because of their unproductiveness, and, on the contrary, alleges the great value and productiveness of the mines.

The respondent admits the passage of the act of December 28, 1892, by which the Attorney-General is authorized to bring suit, but alleges the invalidity of said act because of the approval by the President during a recess of Congress, and for the further reason that the subject-matter is not within the jurisdiction of a municipal court; that the United States have no pecuniary interest in the subject-matter, and therefore can not be a plaintiff, and that the Mexican Government is not entitled to the benefit of a suit in equity when brought in the name of the United States. That the Mexican Government should have prosecuted the alleged false witnesses for perjury and should have brought suit in the courts of the United States against this defendant to set aside said award.

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The fifteenth allegation of the bill is as follows:

Your orator further shows that, in fact, the said defendant La Abra Silver Mining Company was not compelled by threats or acts of Mexican officials or people to abandon its said mines, as stated in said memorial and in the proofs submitted by said defendant company in support of its said claim, on or about the 20th day of March, 1868, or at any other time, but that said claim was a sheer fabrication and every material allegation in said memorial contained was a falsehood, and that all the material testimony upon which said claim was allowed and said award was made was false, and known to be so by all the witnesses giving and swearing to the same and by the said defendant company, when it caused the same to be exhibited as true to said commisssioners, and that the whole of the said award was obtained by fraud effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns.

To that paragraph the respondent, answering, says: "The defendant denies each and every allegation in the said fifteenth paragraph of said bill of complaint."

As to the sixteenth paragraph, the respondent admits that complainants are in possession of press copy and documentary evidence; but insists that the originals should be filed with the bill, so that it may examine them. Respondent denies each and all of the allegations in said paragraph contained and alleges that Exall, shortly before he abandoned the mine, was imprisoned by the local Mexican magistrates without warrant or authority.

The respondent admits that it entered into a contract with A. W. Adams, as alleged, but denies that Adams with the knowledge and consent of the respondent obtained false, fraudulent, or corrupt testimony from any witness in support of the claim; admits assignments, except to the late Samuel C. Pomeroy. As to other allegations of said paragraph, neither admits or denies, but insists on strict proof.

The respondent admits that it claims, as alleged in the nineteenth paragraph, that it is the duty of the United States to pay the remaining proceeds of said award to the respondent, and further denies all allegations of fraud, conspiracy, or corrupt and fraudulent practices contained in the allegations of said bill.

It must be conceded that the fifteenth paragraph of the bill, by its general allegations, presents the substantial issue in this proceeding, and if those allegations are sustained, the complainants are entitled to decree as prayed for in the bill; if, upon the other hand, it is shown by the proof that the company was compelled to abandon its mines, as alleged in its memorial to the commission, and that it has only recovered what in fact it suffered in a loss of property, then the award is to stand, and the respondent is entitled to a decree to that effect.

As was said by this court in overruling the demurrer:

The case is to proceed upon "the proof admitted by the mixed commission in connection with such competent evidence as may be offered by either party," and the court is to consider the whole evidence in arriving at a conclusion as to whether the finding of the commission was procured by fraud on the part of the company. (La Abra, 29 C. Cls., 521.)

The court further said:

If the court, upon an examination of the cause, in the light of the original proof and such competent evidence as may be offered, should come to the conclusion that the award by the Commission was obtained through fraud effectuated by false swearing or other false and fraudulent practices of said company, then it will be the duty of the court to decree that the company, its legal representatives and assigns, be barred and foreclosed from all claim to the money, or part thereof, so

paid by the Republic of Mexico; and upon the faith of that finding (subject to an appeal to the Supreme Court of the United States), the President is authorized to return to the Government of Mexico the money still remaining in the custody of the United States. * * *

If the court should decide that no fraud, or fraudulent practice was perpetrated by the company in procuring the award, then the decree would specifically find that fact, which would be in law a finding for the company, and upon that finding in form of a decree, it would be the duty of the Secretary of State to pay the money to the company or its assignees.

The respondent having an award of the umpire, is entitled to the full benefits of that award, unless it is shown by sufficient proof, that within the meaning of the statute giving this court jurisdiction the award, or some substantial part thereof, was obtained "by fraud, effectuated by means of false swearing or other false and fraudulent practices on the part of said company or its agents, attorneys, or assignees." The burden is upon the complaimants to satisfy the court that the award made by the umpire was the result of fraud as indicated by the statute. We are not sitting as a court of review to determine whether, upon the proof offered and admitted, the award is to be sustained or justified by the weight of testimony, but whether it was procured by false testimony or fraudulent practice upon the part of the respondent. We are not to determine the question as to whether the umpire found against the weight, or great weight of the evidence, but whether the award is the result of fraud and perjury upon the competent testimony.

The pleadings reduced to their logical results, and the scope of the testimony circumscribed to its proper limits, bring the contention of this voluminous case to the compass of the fifteenth paragraph of the bill, which in substance is that the respondent was not compelled by threats and acts of the Mexican officials and people to abandon its mines on or about the 20th of March, 1868, as stated in the memorial and the proofs submitted by the company in support of the claim; that said claim was a sheer fabrication every material allegation was a falsehood; that the award was procured and obtained upon false and perjured testimony; that such falsity was known to the company when the claim was presented to the commissioners, and that the whole of said award was obtained by fraud, "effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns."

The general statement of this paragraph, taken in connection with other portions of the pleading more specifically charging the fraud, may be treated as the embodiment of the issues to be determined in this proceeding.

In the answer of the respondent to the allegations of the fourteenth clause of the bill as to the passage of the act giving the court jurisdiction, the question of the validity of the act, both as to its subject-matter and the manner of its approval by the President, is raised by the respondent.

The question of the validity of the law under which the bill was filed, was fully argued on the demurrer and determined by the court in its opinion overruling the same; and while the jurisdiction of the court as to the subject-matter of a proceeding may be raised in any state of the litigation, we are not now disposed to reexamine the question of the validity of the act of 1892, but rely upon the legal principles announced

in our former decision. (*United States* v. *La Abra Mining Company et al.*, 29 C. Cls. R., 433, and *United States* v. *Alice Weil et al.*, 29 C. Cls. R., 523.)

It is also insisted upon the part of the respondent, that this proceeding, being in the nature of a suit in equity based upon the judgment of a tribunal having complete jurisdiction of the parties and subject-matter, the complainants must show such a state of facts as would justify a court in granting a rehearing or new trial; that if the party in interest, to wit, the Government of Mexico, has been guilty of laches and want of diligence in the presentation of its defense, it is now too late for it to avail itself of any defense which by the exercise of proper diligence might have been presented to the joint commission. The question of diligence upon the part of Mexico is not, as we conceive, before this court; that question was passed upon by Congress in the passage of the law giving us jurisdiction to determine the controversy on the questions of fact, subject to the rules of evidence applicable to the character of the inquiry arising upon the record. We simply come to a conclusion as to the material inquiries arising under the statutes on the evidence properly before us; and upon that conclusion base the legal result in the form of a decree.

The supplemental brief of counsel for the respondents calls the attention of the court to the 16th Vol. of the Am. and Eng. Encly. of Law, p. 566, where it is said, "as a general rule it may be said that a new trial will not be granted on the ground of newly discovered evidence, or where the new evidence is that of a witness who has been examined on a former trial." Also the case of *State* v. *Dorsey* (La., 1890); 780 Rep., 326), in which it is said, "Where a witness was summoned by the applicant (for a new trial) and was present at a former trial but was not interrogated, his testimony can not be relied upon as a ground for a new trial." So in *Poullian* v. *Poullian* (79 Ga., p. 11).

We are also cited to the case of *Stearns* v. *Page* (7 Howard, p. 829; L. Ed. Book 12, p. 923), requiring a specific statement of fraud, how, when, and in what manner it was perpetrated.

The decision of the court on the demurrer determined the sufficiency of the bill, and as we have said, Congress in the passage of the law, determined the legal question as to whether there should be a reexamination of the claim and a retrial of the cause.

In the memorial before the Mixed Commission and which is the foundation upon which this proceeding is based, it is in substance alleged (after stating the purchase and the continuous success of the enterprise) that the company was compelled to abandon the mine by reason of the unfriendly acts and conduct of the officials of the Republic of Mexico; that the agents and servants of said company were arrested without cause, and acts of violence were committed against the property of the company, which were encouraged by the Mexican authorities; that the servants of the company were killed and driven out by the Mexican people; that the authorities made no effort to protect the property of the company, and that in consequence of such treatment it was compelled to abandon its mines and other valuable property, which at the time of such abandonment was worth the sum of three millions of dollars.

Having decided that, under the law of 1892, the court has jurisdiction, notwithstanding the very able arguments of counsel to the contrary, to

enquire into the fairness and justice of the award, we now reach that part of the case when it is necessary for us to determine from the testimony, first, whether the respondent was compelled by threats or acts of the Mexican officials or people to abandon the mine as stated in the memorial on or about the 20th of March, 1868; and if so, what was the reasonable value of the property so abandoned because of the failure of the Mexican officials to afford protection to the company in the prosecution of its enterprise as indicated by its ownership and extent of its property.

The proceeding authorized by the statute giving the court jurisdiction is not strictly in the nature and character of an ordinary new trial at common law, nor to a proceeding in the nature of a bill of review in equity, as we are not authorized to disturb the award upon the ground of the insufficiency of the testimony appearing in the record before the commission, and upon which the award was based.

It must be assumed, that such proof uncontroverted and unimpeached, was sufficient to justify the umpire in making the allowance, and unless we are satisfied from the newly discovered evidence that the award is based upon false testimony effectuated by acts of the company, then such award must stand and be enforced against the Government of Mexico in the payment of the residue of the money.

If the testimony on which the award was procured was false and obtained as indicated by the terms of the law, it must be admitted and assumed that such falsity was known to the company through its agents, and that in this proceeding the company is responsible for such falsity.

If the respondent was not compelled to abandon its property because of the violence of the Mexican people and authorities, and the failure of the Mexican Government to protect it in the enjoyment of its mines and its incident plant, then it is not material what may have been its loss, because of an abandonment.

The testimony on this branch of the case, including what was before the commission and which has been taken and offered since in this proceeding, is voluminous and very contradictory.

Exhibit "A" contains the testimony submitted by both sides while the controversy was pending before the commission; Exhibit "B" contains the evidence submitted to the Secretary of State upon which he reported to the President that it brought into grave doubt the sincerity of the evidence as to the measure of damages insisted upon; Exhibit "C" contains the evidence taken by the complainants; Exhibit "D" is the evidence taken by the respondent since the commencement of this proceeding; and Exhibit "E" is the testimony taken by the committee of the Senate under the resolution of August 30, 1888, authorizing an examination of the claim by the testimony of witnesses under oath.

Certain books and excerpts were offered in evidence during the trial which appear in the record. By the agreement of the parties the evidence taken by the committee of the Senate was admitted, subject to objections to certain portions of it which might be pointed out on the trial. The matters contained in Exhibit "B," purporting to be letters from the letter-press books of the company are substantially established by the introduction of the original book referred to in the application of the

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Government of Mexico to the Secretary of State asking a reinvestigation of the claim, and which was used in the investigation of the Senate.

These exhibits indicate the broad range of testimony from which must be deduced the conclusions of fact upon which the decree of the court is founded. Much of the testimony on both sides is contradicted by the testimony on the other, and the two main issues of the case are subjected to evidence unsatisfactory and suspicious. The evidence before the umpire was, in the judgment of the distinguished gentleman who acted as such, sufficient to justify the allowance of an award which amounted to nearly $700,000, and which by this proceeding is attacked upon the ground that it was procured by testimony false in character and known to be so by the respondent. Under an allegation of that kind it is not strange that the record abounds in conflicting testimony on the material issues of the case, and it is impossible to reconcile the disagreement of witnesses upon any theory of honest mistakes or failure of recollection. It is impracticable in an opinion to deal with such a record in detail. We must, therefore, content ourselves with calling attention to the material points of the evidence and rely on them in connection with the other proof as indicating the probable truth of the controversy.

A question of the construction of the law giving the court jurisdiction may arise as to the extent and power of the court in the investigation as affecting the whole or a part of the award. The theory upon which the Secretary of State acted in his consideration of the alleged grievance of Mexico was, that the examination might properly be confined to the question of "fraudulent exaggeration," and not involve the question as to the right of the company to recover because of the alleged interference of the people in the affairs of the company and its property, the failure of the Mexican authorities to protect the company from such interference, and the violation of their obligations to the property rights of the respondent.

The theory which we have adopted is, that the examination under the statute of 1892, properly embraces the inquiry as to whether the company was compelled to leave Mexico because of the acts of the people and the authorities; and if so, the value of the property abandoned and sacrificed.

The recital in the act of 1892 is that the Secretary of State, as heretofore, reported that the honor of the United States requires that said case (La Abra Silver Mining Company) "should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud."

By the provisions of the statute it is made the duty of the Attorney-General to bring suit in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, "to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, its agents, attorneys, or assigns; and

in case it is so determined, to bar and foreclose all claim in law or equity on the part of the said La Abra Silver Mining Company, its legal representatives or assigns, to money or any such part thereof received from the Republic of Mexico for or on account of such award."

The fourth section in substance provides that in case it shall be adjudged in said cause that the award made by said Mixed Commission was obtained through fraud effectuated by means of false swearing or other false and fraudulent practices of said company or its assigns, or by their procurement; that the said company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of said award. While the fourth section of the statute, which provides as to the decree in case the cause should be adjudged against the company, is not as broad in its phraseology as that portion of the statute which gives the court the right to inquire into the alleged fraud, the evident purpose is, that the whole matter be subject to the jurisdiction and investigation of the court to determine as to whether all or any portion of the sum was procured through fraud and false swearing by the agency of the company, its representatives or assigns. The object of the statute being to investigate as to the award, the resulting power of the court based upon that grant of jurisdiction must be held and construed to be sufficiently broad to carry out and effect the purpose of the statute.

The testimony contained in Exhibit "B" (which embraces in substance the evidence submitted to the Secretary of State, and which brought into grave doubt, as he said, the sincerity of the evidence as to the measure of damages, which was before the Senate in the investigation under the resolution of August 30, 1888, and which was also before Congress at the time of the passage of the act giving jurisdiction to this court to investigate the justice and fairness of the claim), embodies the letters offered in evidence as appearing in the letter-press book of the company, and to these letters the respondent objects upon the ground of incompetency.

Many cases have been cited to sustain the legal force of such objection. Our attention has been called to section 309 of Angell on Corporations as an epitome of the decisions on the question of the power of an agent, the substance of which is that the declarations and admissions of the agent must be within the scope of the authority conferred on him and must accompany the act or contract which he is entitled to do or make.

In the case of *Langhorne* v. *Alnutt* (4 Taunton Reports, p. 511), which was a suit on two insurance policies, certain letters were offered in evidence written by an agent which were under the circumstances of that case held to be incompetent. Chief Justice Mansfield said: "It is unnecessary to go into all the cases where letters of the agent have been received or rejected. The master of the rolls, in the case of *Fairlie* v. *Hastings* (10 Vesey, 123), has gone into some of them; but it suffices to say that these letters are not a part of the *res gestæ*, not letters written in the course of the transaction and forming no part of it, but a mere narrative."

It was held by a concurrence of the judges in that case that the letters written by an agent to his principal, in which he rendered an account of his transactions, are not admissible unless they were a part of the *res gestæ*.

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The same doctrine was announced in the case of *Rayner* v. *Pearson* (4 Taunton Reports, p. 662), in affirming the case of *Laughorne* v. *Alnutt*.

In the case of *In re Del Prov. Gold Mining Company*, Chancery Division of the supreme court of judicature (22 vol. 593), a shareholder in the company sought to have his name removed from the register of members, on the ground that he had been induced to become a member by misrepresentations of a prospectus issued by the company. The only evidence relied upon as tending to prove the misrepresentations was a speech made by the chairman to the stockholders in a meeting held by them. The court decided that the statements of the chairman were inadmissible against the company, for the reason that the chairman was not acting as an agent of the company in a transaction between the parties, but making a confidential report to his own principal.

In the case of *Carroll* v. *East Tenn., Va. and Ga. R. R. Co.* (82 Ga. Reports, p. 452) it is held in substance, that reports to the general manager touching the facts of a railway accident, and as to who was to blame for it, made several days after the event by the superintendent and conductor, are not admissible against the company in a suit for damages.

In the case of *Betts* v. *Farmers' Loan and Trust Co.* (21 Wis. Rep., p. 80) it is decided that a letter written by the assistant superintendent of the road to the station agent, relieving him upon the ground of negligence, was not evidence of an admission of negligence by the defendant.

In *The City Bank of Baltimore* v. *Bateman, Harris and Johnson* (Md. Reports, vol. 7, p. 104) it is held in substance that the president of the bank, as agent of the corporation, any act done by him in pursuance of and coextensive with his authority, would bind the corporation, but declarations not making part of the *res gestæ*, and being representations only of his own mere authority of what was done, could not be received in evidence against the corporation.

The controversy in this proceeding, so far as the parties in interest are concerned, is between the respondent, La Abra Silver Mining Company, and the Mexican Government, upon a condition which is alleged to have existed at the mines of the company in the State of Durango and other places, in the Republic of Mexico, commencing in the year 1865 and extending into the year 1868.

It is not a controversy as to contractual rights and legal obligations arising from relations of commercial intercourse, but originated from alleged wrongs and injuries to the property rights of the company, because of alleged violence of the people of Mexico, the public authorities, and the failure of the Mexican Government to protect the agents, servants, and property of the company.

It may be said the *res gestæ* of the controversy is the condition of the company during that period, so far as the same was affected by the people of Mexico and the acts of the public authorities, and the consequent effect upon the property rights of the company, because of the acts of the Mexican people and the alleged failure upon the part of the Mexican Government to protect and preserve from popular violence the agents, servants, and property of the company.

The company, although organized under the laws of New York and having its principal office in the city of New York, was instituted mainly for

the purpose of carrying on the business of mining in the State of Durango and other places, and as a result of that purpose its property and field of practical life and existence were at the mines belonging to it in Mexico.

It had no substantial existence except in legal contemplation at any other point. While the general policy of administration was determined in the city of New York by its board of directors, its practical life and existence were conducted by its superintendents at the mines, who controlled and directed the business from which success or failure was to come. Those superintendents were in law and in fact, from the necessities of the situation, general agents, having full control of the business of the company and dealing with the property and rights of the company on the broadest basis of authority. Their relations of responsibility, confidence, and trust were commensurate with their power as agents. The business outside of the general policy of the company was all in their hands, and all knowledge of conditions and prospects came to the home office in and through the medium of their communications. They were assumed to have the ability of management and were the only source of knowledge of conditions accessible to the board of control in the city of New York. They and their subordinate servants were the embodiment of the company in the field of active operations and at the point where the corporate existence of the company came in contact with the practical purposes of its functions.

Aside from the actual direction of the business of the company in the management of its interests at the mines, the next important duty of the agent was to communicate with the officers of the company in the city of New York, so that they might be reliably advised of the affairs of the company at the most material point of its existence. In this connection may be quoted the general principles as gleaned from the highest authorities on the subject of agency, as found in Ewell's Evans on Agency (p. 440): "A principal is liable to third parties for whatever the agent does or says, whatever contracts, representation, or admission he may make, * * * provided the agent acts within the scope of his apparent authority, and provided a liability would attach to the principal if he were in the place of the agent." That is fundamental law, supported by authorities too numerous to mention. (*Hanover R. R. Co.* v. *Coyle*, 55 Pa., 402; *Harriman et al.* v. *Stowe*, 57 Mo., 96.)

The letters to which objection is made, are letters commencing during the time of the first superintendent and extending through the agency of two others until after the time it is alleged the company was compelled to leave Mexico in consequence of the violence of the people and authorities.

In this connection it may not be amiss to cite the historical fact, that at the time the company went to Mexico and during the time many of the letters objected to were written, the condition of Mexico was disturbed in its political existence by the invasion and usurpation of Maximilian, who had surrendered his birthright to a crown in the Old World that he might become the founder of an empire in the New, and so successful was his effort in that direction that for more than three years the President of the Republic was driven from his capital in his exertions to maintain the power of the Mexican Government as a republic. In that condition of affairs the communications of the superintendents of the

company became important to the company at its home office in New York, and it must be assumed that in those communications the board of directors and officers of the company in New York placed the utmost confidence, and what was true during the usurpation of Maximilian as to the importance of communications was to a more limited extent true as to communications written afterward.

The purpose of judicial investigation is to ascertain the truth and whatever tends, subject to the safeguards of legal inquiry, to establish the truth is upon every principle of legal philosophy competent to be considered by the court in arriving at a conclusion.

Two grave and vital enquiries of fact arise upon the issues and evidence in this case: First, is it true, as alleged by the respondent La Abra Silver Mining Company, that it was driven from the use and possession of its mines by the people of Mexico and the authorities and that a large amount of personal property was taken from it? Second, what was the value of its property abandoned and the property alleged to have been taken by the Mexican authorities? In arriving at a correct answer to these enquiries, the court is to consider the evidence submitted to the commission and such competent evidence as may have been taken by either party since the case was referred by the statute of our jurisdiction. Whatever testimony or evidence there may be in the record from either of these sources which tends to establish the truth in reply to those enquiries is competent.

Assuming that the condition in Mexico both as to the treatment of the officers and employees of the company by the Mexican authorities and people, and the value of the property alleged to have been taken and abandoned, is the gist of the inquiry to be made upon the evidence, is it not proper to consider what was written by the officers of the company to each other during the period in which it is alleged the outrages were committed and the property abandoned? Does the fact that the communications were intended to be private and confidential prevent their consideration in a proceeding intended to determine the truth or falsity of the alleged violence? Does the confidence in which they were written lessen their force as competent evidence? The letters passed between the responsible and confidential agents of the company, dealing with matters within the knowledge and authority of both and having the impress of reliability. Men under such circumstances do not mislead each other.

No legal or equitable right of the company is violated by their use in a judicial inquiry where the truth is sought as to the alleged grievances, and no just ground of complaint can possibly exist upon the part of the respondent when its rights are determined by the acts and declarations of its responsible agents while in the discharge of their duty. The recognition of the competency of such acts and representations do not enlarge the boundary of power and discretion on the part of the agent to the prejudice of the right of the corporation.

Corporations necessarily act through the medium of agents, and the acts and statements of its responsible agents when in the discharge of their duties become in law the acts and statements of the corporation.

The respondent further objects to the introduction of the letter book for the reasons it does not contain certain letters which were written by

Bartholow, the first superintendent, before the commencement of the book, and other letters which were written by Garth and Exall and which do not appear; and upon the further ground that the book bears indications of having been mutilated, and that it is not a continuous and complete showing of all the correspondence of the officers of the company between Tayoltita and New York. We have fully considered the grounds of objection and the arguments of counsel in support of them, and after an inspection of the book we determine that the letters of the superintendents at Tayoltita and letters from the home office, written by the officers of the company to the superintendents within their authority as agents, are competent to be considered by the court in the trial and decision of the cause.

The fact that some letters may be missing does not destroy the legal effect of others which appear in the book and which are shown to be the letters of the person purporting to have written them. Letters written by Exall to Granger after his departure for New York in the spring of 1868, and after he had ceased to be connected in fact or in authority with the mines of the company, do not come within his power as superintendent, and are not competent. Other objections were taken by both parties to the consideration of matters as evidence, but it is not practicable to note them in this connection.

The letters are introduced and admitted, upon the theory that they are representations or admissions of the company. The rule is as to admissions, that the whole admission is to be taken together and the whole must be considered in determining its effect, but letters written at different times and complete in themselves can not be considered as a continuous admission, the force of which is destroyed by the omission of part.

The evidence for the respondent which was submitted to the joint commission was taken by Alonzo W. Adams, who was employed by the company after it was decided to prosecute the claim, under a contract that he was to receive as a contingent compensation one-third of the amount awarded by the commission, and the books and evidence in the possession of Granger, who had been an employee of the company, were procured by Mexico under a contract that Granger was to be paid the sum of $3,500 in case the claim was ultimately defeated. This condition being alike to both sides, the testimony comes before the court in at least a "questionable shape." It is insisted by counsel for the complainants that Adams, having the incentive of a large contingent compensation, was unscrupulous in his method and means of procuring testimony, while upon the other side it is insisted by the counsel for the company that Granger had every inducement to withhold testimony in favor of the company and mutilate the books which he produced under his contract for contingent compensation.

Whatever may be said as to the manner in which either performed his duty toward his employer, it may be said that the terms of the employment were not calculated to induce the most scrupulous means of investigation and without criticism in detail, it may be said, that neither the agent of the company nor the Mexican agents are without grounds of suspicion.

Upon the controversy of the alleged violence of the authorities and the value of the property alleged to have been taken and abandoned,

it is impossible to deal in detail with the testimony. It is spread over many pages of the record in the different exhibits, embracing the extraordinary compass of more than 1,500 pages of printed matter.

As has been said in dealing with a record so voluminous in an opinion, it is only practicable to call attention to the more prominent facts as indicating the truth of the controversy, and upon the faith of those facts, taken in connection with the rest of the testimony, predicate the ultimate determination of the court.

While the company was organized for the purpose of practical and legitimate mining and not for the purpose of bringing into existence a speculative stock to be dealt in the stock markets of the world, the testimony does not indicate that its business was managed by competent experience in mining in the person of its superintendents, and the interest of the company was subjected to the embarrassment of three changes of the superintendents from the latter part of 1865 to the early part of 1868.

Aside from the experience which Granger had before his connection with the company, it does not appear that any of the superintendents or person in charge (except as hereafter stated) had any practical experience either in mining or in the management of a business employing a large number of operatives. As to whether the business of the company was managed according to the best mode of development and use of such property, is among the controverted questions of fact arising from the conflicting testimony of the witnesses.

In this connection it is proper to cite what is said by Bartholow in his letter to Garth, February 6, 1866, on page 239 of Exhibit B:

> I have put our mines and mining in charge of Mr. George Cullins, a gentleman of much experience in mining, who has been working in the mines of Lower California for over two years, and I am highly pleased with his practical good sense and sound judgment; he knows more about working a mine than all the rest of us put together, and he says that in his opinion, after seeing a large number of silver mines in Mexico and the United States, and worked in quite a number, he has never anywhere seen so good a property as this.

In the same connection may be cited what is said by Exall in his letter to Garth, dated at Mazatlan, November 17, 1867 (Exhibit B, p. 312):

> To add to my further embarrassment, Mr. Cullins, whose term expired on the 16th instant (since my leaving Tayoltita—I left there on the 10th for this point), intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of the next steamer (don't know as yet if I will succeed in getting him to delay), when I hope you will have seen the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the company, or abandoning the enterprise at once. Nothing can be done without further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men which are now at work in them. This I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear it money isn't very soon sent some of the mines will become open to denouncement.
>
> In my last letter I mentioned the amount required for immediate demands, $3,000, which must be sent out. By next steamer Messrs. Elder, Sloan, and Cullins, if paid off, will sail for San Francisco; if not paid off, suit will be commenced, and, as I have no means to defend the case, fear it will go against me. When these parties leave, the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, who I am also owing, and I away much of the time.
>
> What you intend doing must be done promptly. * * * The political state of the country just now is rather discouraging. I hope by the time this reaches you, you will have received statement. Everything at the mines is as it was when I last wrote, only more gloomy in appearance, on account of not being able to employ the people and put things in operation. Please do something immediately, and inform me as speedily as possible.

As has been said, the issue in this case is circumscribed to the allegation made in the 15th paragraph of the complainants' bill, in which it is substantially alleged that the company was not driven out of Mexico by the failure of the authorities to protect it from the violence of the people, and that its property, as it had been possessed by the superintendents of the company, was worthless.

To that allegation there is a general denial by the answer of the respondent.

In the consideration of the question involved in those allegations we are compelled, without descending into details, to rely to a large extent upon what took place between the responsible agents of the company during the time it is alleged those outrages were perpetrated by the people and against which the company was not protected by the authorities of the Mexican Government. The active and responsible agents of the company during that time were the three superintendents in Mexico—Bartholow, De Lagnel, and Exall. It is not necessary to determine in this connection what the legal relations of Granger were to the company, who was placed in charge of its property by an appointment by Exall on the 26th day of February, 1868, shortly before he left Mexico for the purpose of returning to New York. Bartholow's connection with the company commenced upon its practical organization in 1865, and continued until some time in May, 1866, when De Lagnel, as superintendent, assumed direction and control of the business of the company, who continued in its employ as such superintendent until he was succeeded by Exall, in April, 1867, who was the last legally constituted superintendent of the company.

None of these men had any experience in the business incident to the development of mines and the mining of ore. Their connection with the company lasted about two years and a half, and the proof indicates that they quit of their own accord and without solicitation of the company. Mr. Bartholow's connection was not intended to be permanent, De Lagnel was for a year and Exall ceased to be the agent of the company for the reason that its operations and results had not been successful. Mr. Garth was the treasurer of the company from some time in 1865 until after the alleged abandonment by the company of its mine because of the alleged interference of the Mexican authorities.

During that time, as is shown by the correspondence, he was the responsible and practical representative of the company in the city of New York, and as such held communications with its agents in Mexico as to the practical conduct of its business and the financial condition of the affairs of the company. While other persons held the offices of president, vice-president, and directors, he assumed by authority it must be presumed, to direct the agents of the company in the practical business of mining.

The material allegations of the memorial submitted to the joint commission, and which are antagonized by the allegations of the bill, are, as to the hostility of the Mexican Government toward the respondent and the value of the property alleged to have been abandoned.

The bill alleges in that connection that "when Garth instructed the superintendent, Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied on the 6th day of October, 1867, 'There *is*

no difficulty about authorities, boundaries, or anything else concerning the mines and hacienda provided there is money on hand, and money *must be sent*.' That early in 1867 the said Garth, treasurer of said company, advised Superintendent Exall at the mine, that no more money could be sent him by said company; that the draft on said company for $5,000, drawn by Superintendent De Lagnel through the Bank of California, had been protested, and that the said Exall must pay the expenses from the proceeds of the mine; and in July, 1867, that Garth wrote to said Exall, 'If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop, the better for all parties concerned.'"

Those allegations of the bill are substantially proved by the letters from which the quotations are made, and become important in the consideration of the question as to the hostility of the people and authorities of Mexico.

Aside from the arrest of Exall, which took place some time in the early part of January, 1868, the most trouble in the conduct of the business of the company occurred in June or July, 1867, when it is alleged that the Mexican authorities took practical possession of the mines and ousted the company from their control and direction.

It must be assumed, that whatever may be said as to the fealty of Exall toward the interests of the company growing out of his alleged connection with Granger, in 1868, he was acting in good faith with the company during the year 1867 and representing its interests as became his duty as a faithful servant. As a result of that assumption, it must be presumed, that he communicated to the company in New York the substantial condition of the interests of the company so far as it was affected by the acts of the people of Mexico and the failure of the Mexican Government to protect them. Mr. Garth being the agent to whom he did, as a matter of fact, communicate, and who must be assumed to have been informed to the fullest extent as to the interference of the Mexican authorities, testified before the committee of the Senate in its investigation upon the question of the interference of the Mexican authorities.

On page 164 of that examination, in answer to a question by the chairman of the committee, Garth said in substance, that he did not recollect of having written to Exall between the 10th of August and the 10th of October, 1867. As to whether between those two periods he felt any uneasiness about the property of the company, he answered: "I had other things to attend to; and, my dear sir, this was comparatively a small matter."

On page 166, in answer to the direct question, "Well, had anything occurred within your knowledge or information at that time, August 10, 1867, to convince you that that company then had a claim against the Government of Mexico?" he answered, "Not further than the general apprehensions of trouble occurring there to our employees." And again—

Question. Then, if I understand you, nothing had occurred, but you had apprehensions that something might occur?

Answer. Yes; that was the idea.

Question. To create a claim against Mexico?

Answer. Yes, sir; in case we were driven out, and as this letter says.

Question. Which letter?

Answer. The latter part of the letter of August 10, 1867. I think that letter would explain at that time my views about it.

Question. That is the same letter from which I am reading?

Answer. Yes; I do not know whether you are reading from that letter—New York, August 10.

Question. Point out the paragraph where it speaks of being driven out of Mexico.

Answer. (Reading:) "From the reports we get in the papers, we find that Americans and all foreigners will not be protected in their persons and rights in that country, and that we may have to abandon our property there." Now, this thing expresses it as well as I can now. If you ask me if anything had actually occurred there that I knew of there that I would then make a claim against the Government of Mexico, I can answer, "Not to my knowledge."

The material allegations of the company's memorial to the Mixed Commission are, in substance, that intense prejudice existed in the public mind against Americans; that such prejudice was intensified by the belief that the United States intended to annex said States to the dominion and territory of the United States; that the agents and servants of the company were arrested without cause, and acts of violence committed against the property of the company, which were encouraged by the authorities of Mexico; that the servants of said company, while in the performance of their duty, were intimidated, killed, and driven out by Mexican people.

One of the alleged grievances coming within these allegations of the memorial is the arrest of Exall, which took place in January, 1868. In connection with the arrest and imprisonment of Exall, the chairman of the Senate committee addressed the following question to Mr. Garth (p. 165):

Question. Now, if you had never heard of the imprisonment of your agent, Mr. Exall, before he made that report to you in New York, what reason had you for supposing that the Mexican Government had any hostility toward your company?

Answer. Well, there was talk with Mr. Bartholow and with Hardy, who had come back from there, and other people who had been employed at the mines had come back from there.

Question. What people?

Answer. Why, Dr. Hardy, I. V. Hardy, and other people that I do not recollect. I think this man Cullins came there once to New York, one of the miners, and from various sources it was commonly understood that life and property were not safe in that part of Mexico.

Reference is made to this examination, as it tends to show that the first knowledge of the imprisonment of Exall which Garth had, was derived from what was told him by Exall on his return to New York, and a deduction from that fact that Exall did not regard his imprisonment at the time as an interference with the business of the company by the Mexican authorities who had imprisoned him.

In June or July, 1867 (the time being in some doubt from the inability to determine exactly the date by an inspection of the original documents), serious trouble existed at the mines of the company, originating between the officers of the company and its employees, and in which the Mexican authorities participated, as is shown by the orders made by the local authorities, appearing on page 360 as Exhibit A, marked, respectively "V," "W," "X," "Y." These orders have been translated by agreement of parties as follows:

Exhibit V.

Second Conciliating Court of Tayoltita.

To the Citizen Superintendent of the Abra Company, Present:

In pursuance of a communication which I received yesterday from the political chief of San Dimas, I hereby notify you that *if the work of the Abra Company is not to*

be continued according to the system of one-third (*i. e.*, ⅓ in money), *as heretofore*, YOU ARE TO VACATE THE MINES AT ONCE, so that the miners may continue to work for their own account and may lose no more time.

Liberty and Reform.

GUADALUPE SOTO.

TAYOLTITA, *July* (*June?*) *4th, 1867.*

EXHIBIT W.

SECOND CONCILIATING COURT OF TAYOLTITA.

To the Citizen Superintendent of the Abra Company, Present:

This court sees, to its great annoyance, that twenty-four hours have passed since it sent a communication to you, and that you have not deigned to answer it. Wherefore this court notifies you that you are to make a suitable arrangement with the miners as regards their work WITHIN TWO HOURS, and if they do not agree thereto *you are to vacate the mines*, in order that the aforesaid miners may lose no more time.

Liberty and Reform.

GUADALUPE SOTO.

TAYOLTITA, *June 5th, 1867.*

EXHIBIT X.

OFFICE OF THE POLITICAL CHIEF OF THE DISTRICT OF SAN DIMAS.

To the Citizen Representatives of the Tayoltita Mines:

It having come to the knowledge of this office that you have brought the work to a standstill in your mines—

I hereby tell you that such was not the agreement which you made with me. I therefore think that you pay no regard to your word. If, however, you do not wish to work yourselves, *give permission to the men to take ore from the mines, because I will not be responsible for the evil consequences resulting among people without employment.*

Independence and Reform.

M. MORA.

S. DIMAS, *July 10th, 1867.*

EXHIBIT Y.

OFFICE OF THE POLITICAL CHIEF OF THE DISTRICT OF S. DIMAS.

To the Citizen Judge Guadalupe Soto, sole Conciliator of Tayoltita:

This office has learned with regret, through your communication, what abuses are committed by those American gentlemen, who, the first time, agreed to pay their workmen entirely in coin, and the second time to pay them half and half, and the third to pay them a third part (in money). You will notify them, in your capacity as judge, by my order, that they must carry out the last agreement at least—that is to say, they must pay one-third in money. *If they fail to do this they must leave the mines so that they may be worked by the miners to the best of their ability*, for neither do the mining ordinances provide that miners may be paid entirely in goods, nor does the Government allow such abuses, and it is tired of receiving thousands of complaints on this subject.

You will bring the contents of this communication to the notice of the American citizen who is in charge of the mines over which you have jurisdiction.

Independence and Reform.

M. MORA.

JUNE 3D, 1867.

July 13, 1867, is the date of the next letter from Exall to Garth (p. 307, Exhibit B):

When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan, a small force in each.

Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses necessitated my stopping off the whole force from the mines. As I had only a short time previously reduced the cash payment from one-third to ——— (which occasioned a stop for eight or ten days, which I was glad of, as it was so much clear gain, and a little spat with the officials which was gotten through without much trouble), I thought it best not to stop off immediately. * * * The officials are getting daily more troublesome; their demands are all foolish and very unjust, but we have to do the best we can with them and take things as quietly as possible.

The trouble evidently originated from a disagreement between the company and its employees as to the compensation and mode of payment, a condition which often arises in the best-governed communities of every country, and is one of the most delicate and troublesome subjects to be dealt with upon the part of public authorities. In the troubles incident to the disagreement, the Mexican authorities failed to protect the officers and the rights of the company to the extent they were entitled to, but that such failure was for the purpose of driving the company away and getting possession of the mines does not appear, as alleged by the respondent.

It seems that the trouble, for the time being, at least, was amicably arranged, as will be seen by the letter bearing date July 11, 1867, from Exall to the political chief of San Dimas, in which he says (p. 303, Exhibit B):

> Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was expected, and I had no intention to reply to it. This morning I was advised that the answer was expected by you. In respect to the compromise of which you spoke, it was made while I was in Mazatlan, to last until I should return, and then I was to arrange with you as best I could, and if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work; and desiring that with this there may be the most friendly understanding about the affair, I am, your most humble servant.

An argument was made in the trial of the cause as to the law and custom of Mexico in relation to mining, which gives to miners under the direction of a court the right to work a mine upon certain conditions; but the law and custom are not before us, and we are unable to perceive by what right of judicial authority the orders by the jefe político were made.

While the orders of the local authorities indicate a failure to discharge the functions of the Government in the protection of property, the interference of the authorities and the illegal orders of a court do not seem to have impressed the agent of the company with the seriousness in which they were regarded by the officers and agents of the respondent after the commencement of proceedings to recover compensation founded upon alleged failure to protect its rights. The letter written on the 13th day of July, 1867, which evidently refers to the troubles in which the orders were made, lays no stress upon the act of the authorities as such an interference which prevented the subsequent conduct of the business of the mines.

The above seems to have been the last communication between the parties with reference to the trouble occurring about that time. In this connection it is proper to note that the umpire, in passing upon the questions submitted to him, said, in substance, that the superintendent took such steps as he could to obtain protection from the authorities, but finding his efforts in vain he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. As applicable to that statement the deposition of Mr. Chavaria may be referred to. By his deposition it is shown that sometime in July or August, 1867, he was at the mines of the company at Tayoltita, and had communication with the local authorities of Mexico, and that as a result of his being in communication with Exall at that time, he was employed

to solicit from the State government of Durango protection for the company; that he made application to the authorities of the State of Durango for that purpose, but it availed nothing. The only answer given was that the government of the State would not interfere in private matters.

His deposition tends to show that great prejudice existed in the minds of the people against the company, and that that prejudice was participated in by the local authorities.

On July 10, 1867, Garth writes to Exall a lengthy letter (Exhibit B, p. 320).

* * * * * * *

Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.

He also said in the same letter:

I am glad to hear that you are taking out rich metal and hope it will turn out valuable. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, as well as the old Mexican miners, should have been so deceived as to the value of the ore. * * * Of course you keep an accurate account of the cost, not only of raising and transporting the ore to the mill, but of the cost of crushing it and converting into coin or bullion; and, as it is a matter of simple calculation, you can soon see if it will pay or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.

* * * * * * *

De Lagnel, who was the second superintendent, and whose agency commenced in May, 1866, and continued until 1867, and who is one of the few witnesses who has escaped severe criticism in this case, gave his deposition on July 9, 1894. He was not examined in the proceedings before the joint commission and the reason assigned by the company for its failure to examine him is, that by the exercise of diligence they were unable to find him. That excuse is severely contested by the complainants. It is not important that that issue be settled in this connection.

The substance of his deposition on the subject of disturbances is that the country during the time of his agency was disturbed by Imperialists and Liberalists, and that the forced loan was the nearest approach to violence; as to the demonstrations made by workmen, he speaks of a general feeling on the part of the people expecting an attack; speaks of civil authorities; little dealing with them; had to get permission or stop mines; had no trouble in getting extension; never came in personal contact with Soto, the jefe politico, except when I wrote. "I relied upon myself for protection;" wild country; saw no authorities or exhibition of authority from one year's end to another; armed demonstration described before Senate, because Mazatlan was beleaguered by Liberalists. French Imperialists had possession, and the General would not permit passage; speaks of armed demonstration; should not have known there was any trouble except for the clerk hearing the men talking in low tones.

The man who seemed to be the ringleader didn't say a word to me. Mr. Saius said to me, "If you are going to do anything you had better do it quickly, because this man is talking very ugly and is inciting these men to make an attack upon you."

In this connection it may be said that by the exhibition of great nerve on the part of Colonel De Lagnel serious trouble was averted.

In a letter dated January 5, 1867 (p. 294, Exhibit B), of De Lagnel to Garth, he says:

I could not under any circumstances or for any consideration consent to remain longer than the period contracted for. I desire to do rightly in all things; but regard for myself and my immediate family demands that I should be elsewhere as soon as possible.

On page 30 of Exhibit 2, De Lagnel is asked the following question:

Question. Now, was there any interference during your superintendency of the company by the military authorities with the operations of the company?
Answer. Only in that one instance about that forced loan, and they never appeared on the place then; they never came nearer than San Dimas.
Question. That was the nearest approach to interference by the military authorities?
Answer. Yes.

One of the grievances complained of on the part of the company is what is known as forced loans, and which are referred to in the opinion of the umpire as an indication of the hostility of the Mexican authorities. By reference to Exhibit Z (p. 360 of Exhibit B) it will be seen that on the 27th July, 1866, a demand was made upon the officers of the company for the sum of $1,200 by Valdespino, who was in command of the forces of the Liberal Government near the mines of the company. When that demand was made on De Lagnel he was advised by a Mexican who had been in the Liberal service that unless he complied his place would be sacked; to which De Lagnel said, "I haven't the money, in the first place, and if I had, I would not pay it," and as a result of that determination De Lagnel states that he sent them a few goods and wrote a courteous note to one of them expressing regret that he could not comply with their wishes. They wrote him an acknowledgment and sent a receipt for the goods, and that was an end of it.

In connection with the subject of forced loans may be quoted the letter of Bartholow in Exhibit B (p. 251), in which he protests against illegal exactions in the form of onerous taxes, and threatens if the exaction is enforced that he will be compelled to discharge the miners, mechanics, and laborers, and leave the country until such time that security and protection could be obtained from the Mexican Republic In the same letter he enters his protest against the collection of illegal taxes and speaks of an appeal to his Government at Washington.

Some of the principal matters relied upon by the company in showing the interference by the Mexican authorities with the agents and officers of the company are, the alleged robbery of Scott, the murder of Grove, and the imprisonment of Exall.

Shortly after the murder of Grove occurred, as is claimed, the robbery of Scott happened as given in Bartholow's testimony before the commission (Exhibit A, p. 477), in which he says in substance: I recall the amount taken; I entered it upon the books of the company, charging the same to robbery account where other prestamos and robberies were entered. The name of the employee was Robert Scott, and in addition to the several prestamos levied and enforced by the military authorities, which I said ranged from $300 to $600.

In Bartholow's letter to Garth, April 10, 1866 (Exhibit B, 255), it is in substance stated, that in consequence of the unsettled state of the country,

he has great trouble in getting money transported to pay hands and other expenses, but that his efforts to transport money had been successful, except in one instance, and then he states the instance as occurring with Scott, substantially as follows: I gave him a check for $1,000 to bring up; besides this he had some money outside of this sum, which was left after paying the taxes in San Ignacio; he got the money as directed and started to overtake a train which was bringing supplies, and when out about twenty miles from the port six or eight armed men sprang upon him, ordered him to dismount, and robbed him of $1,178 in money, his pantaloons, and boots. He immediately informed the nearest commander of the Liberal forces, who sent for him to identify the robbers; he complied, but could not find them for the reason that the officer could not find half his men.

I also at the same time opened a correspondence with General Corrona through the prefect, Col. Jesus Viga, at San Ignacio, who, by the way, is, I think, one of the most perfect gentlemen I have met in the country, and I am of opinion that but for the turn in military affairs which occurred a few days since, we would have in some way or other been reimbursed for the loss; but now I have no hope whatever, and we may as well charge up $1,178 to profit and loss.

Another marked grievance, is the alleged murder of Grove, whose death was detailed at considerable length in the testimony of witnesses whose depositions or affidavits appear in the proof before the joint commission on page 364 of Exhibit A. It is said by John Cole, one of the witnesses for the company, that in 1867, between Mazatlan and San Dimas, captures took place there several times in 1866 and 1867; and that on one occasion one of the officers, an American, in charge of the mule train, was killed by the Mexican troops for attempting to defend the property in his charge. He was quartermaster of the train at the time. Other witnesses, including Exall, testify as to the death of Grove by violence at the hands of the Mexican authorities while in charge of the mule train of the company. Bartholow, the first superintendent, also testifies in substance that Grove was murdered while in the discharge of his duty as a custodian of the mule train of the company, and the consequent loss of 150 mules.

On March 7, 1866 (p. 247 of Exhibit B), is a letter of Bartholow to Garth, in which he gives a detailed statement of the circumstances of the death of Grove, the substance of which is, that in his last letter to Garth he had mentioned the absence of Grove and his fear that he was murdered; that since the date of his last letter his worst fears have been realized and the body of Grove discovered. He says in substance that his pistol and clothing have not been found nor has his mule turned up, but he hopes it will. States that he has placed the fact of the death of Grove before the commander of the Liberal troops, who took great interest in the matter and promised to use his best efforts to bring the offenders to justice, and if found they will be tried by court-martial and summarily executed if found guilty. The letter is quite lengthy, but the substance of it may be stated as follows: That Grove lost his life by his imprudence; that the night previous to his arrest was passed at the house of a man of bad reputation; that Grove gave him to understand that he had $4,000 in money, and that as a result of that communication he had been murdered.

In another letter (p. 256 of Exhibit B), after stating that he fully wrote him in his last letter, he proceeds to state that the Liberal troops

have arrested the murderer of Grove; that the villain was in the employ of the company at the time of the murder; that he was tried for the murder of Grove; that they failed to convict him of Grove's murder, but did convict him for the murder of a woman some time before; that before his execution he confessed to the murder of Grove and revealed the names of his confederates; that these confederates would have been arrested had not the Liberals been driven from the country.

One of the most important allegations of the bill (which is in denial of one of the allegations of the memorial) is "that the superintendent was not imprisoned, but was only told to consider himself in arrest at his own hacienda for alleged contemptuous treatment of a judge, and that he straightway complained to the prefect, after which no further restraint was imposed upon him." This allegation is in reference to Superintendent Exall, and becomes important for the reason that he was at the time the representative of the company in charge of its property and directing its business. The evidence is not very clear as to the exact date of the arrest, nor is it very satisfactory as to the extent of the arrest by the magistrate Perez. Whatever may have been the purpose of Perez in doing what he did in reference to Exall, it is indicated by the testimony that the immediate cause of his arrest grew out of and was dependent upon an insult which Perez says was offered to him in the store of the company.

It seems that Perez, according to the statement of Exall, went to a place in the store where he had no right to go; he was ordered by Exall not to remain; he became very angry and arrested Exall for such indignity. It is a theory of the company that the purpose of Perez was to interfere with the control of the company over its property, take possession of it, and thereby drive the company from Tayoltita and the possession of its property. It is a theory of the complainants that the trouble between Exall and Perez had no greater significance or consequence than a quarrel between individuals, and had no reference to the rights of the company.

Exall, in his deposition taken in 1869 and appearing on page 337 of Exhibit A, says in substance: I was arrested by order of the local magistrate, put into prison, sentenced to pay a fine of $50 and imprisonment for two months; had no trial or examination; did not know why I was arrested; I committed no act, crime, or offense; released through the personal influence of Granger, who promised payment of the fine; protection was denied me. On 7th January, 1868, he applied to the jefe político at San Dimas in a long communication, in which he detailed substantially the same facts as stated in his deposition except as to his imprisonment. It does not appear that the jefe político did anything. There is very sharp controversy in the testimony, and was in the argument of the case, as to whether his imprisonment was nominal and technical or whether it extended through a period of many days. It is insisted by the complainants' counsel that it was merely nominal and by the respondents' counsel that it was substantial, and in a loathsome place of confinement.

The imprisonment complained of by Exall is the same imprisonment about which Garth was examined in the investigation before the Senate

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committee. There is no dispute about the fact that by the intervention of Granger Exall was relieved from imprisonment, whether it was constructive or actual. The books of the company show that on the 7th day of January, 1868, a charge was placed upon the books of $50, which, as it is insisted, refers to what was paid by Granger. The alleged imprisonment of Exall, coming as it did within the general allegations of the memorial and which is denied by the allegations of the complainants' bill, has assumed a grave importance in the decision of the question of fact, as to whether the company was compelled to abandon its mines in consequence of the acts of the authorities of Mexico.

It does not appear from the evidence in the case that after the imprisonment of Exall, which must have been about the 7th or 8th of January, 1868, there was any change in the condition of the property of the company from that time until the 20th of March, 1868, except that on the 26th of February Exall placed Granger as superintendent in charge of the affairs of the company and the possession of its property. At the time Exall was ordered to report at the house of Perez under arrest there was great excitement in the crowd which gathered in consequence of the arrest, but it does not appear that any actual violence was committed by any of the persons in the crowd.

January 24, 1868, is the first communication by Exall to Garth after his imprisonment on the 7th or 8th of January preceding. That letter is dated Mazatlan, and in which he says:

I came down to meet the steamer from San Francisco in hopes of receiving letters from you. I received none, and now, being entirely out of funds and stock, and being sued by agents from Bank of California for the payment, have to let things take their own course, as I am unable longer to protect your interests here. * * * I am doing nothing whatever at the mines, and can not until I receive money to operate with. I haven't means to protest now, and they are liable to be denounced at any moment. * * *

By December steamer I sent you a telegram from San Francisco; no reply. * * * I am owing considerable, and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go by way of San Francisco; will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of California from getting possession; thus far have succeeded, but can prevent them no longer, and fear they will eventually have their own way. * * *

I have only one man with me now; am compelled to keep someone. Please telegraph me * * * on receipt of this. You can judge by what has been done in New York and sent to me whether or not I may have left. (Exhibit B, p. 317.)

Garth in his examination before the committee says he has no recollection of receiving that letter.

This letter of January 24 seems to be the last one written by Exall to Garth, as appears from Exhibit B. The first letter written by Garth to Exall was on May 10, 1867, in which he says:

We now expect by the next steamer, now nearly due, to see Colonel De Lagnel or to hear something further from him or you. In our former letters we stated that in the event of his leaving Mexico we supposed that you would take charge of affairs; since when we have given no further instructions on this point. * * * The affairs of the company here are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any further aid from here and look anxiously to be reimbursed very soon from the products of the mines, and it is hoped that your best energies will be exerted to afford relief (p. 318, Exhibit B).

On the 1st of May, 1878, Exall made a statement under oath as to the letters purporting to have been written by him, in which he attempts to explain and qualify the substance of what he said in the letters. The statement was made at the instigation of the attorney of the company because of the use which was being made of the letters in what is known as the "Slaughter pamphlet." In taking the testimony the counsel of the complainants objected to the statement of Exall as incompetent, but it was referred to and commented on in the argument of the case, as was the Slaughter pamphlet. In the absence of a concession on the part of the complainants as to the admission of the Exall statement, it would not be competent, being ex parte and made long after his connection with the business of the company had ceased.

It is not necessary to discuss the character of the agency, contract, and pamphlet written by Slaughter in the preparation of the claim of Mexico, and while they may be justly liable to severe criticism, the rights of the respondent must be determined, as they are founded on the substantial and important facts as they exist in the proof and as they are affected by the law.

Bartholow, in his deposition taken June 24, 1874, speaks of the capture, applied to General Corrona to restore the property, implored protection. His testimony on this point is in substance:

He referred me to the commanding officer. I visited him. I told him the circumstances attending the capture and robbery. He said he had no authority to indemnify the company. I requested protection (p. 476, Exhibit A).

He also states that the amount of cash prestanos levied and enforced during his superintendency amounted to a little more than $3,000, and the value of mules and supplies taken from the company by the military not less than $25,000. "It is not true that the company ever had protection from any of the Mexican authorities, either national or local, nor any offer of protection when applied for by me and other officers under my superintendency." He speaks of the conspiracy, headed by Manjarez, to drive him and the employees out of the country.

Manjarez admitted that he was one of the ringleaders of the mob organized to kill and drive out the company, but that he was led into the conspiracy; he was in the employ of the company at the time, and was discharged by Bartholow. He testifies that the superintendents and subordinates of the company were qualified for their positions by knowledge of the science and practice in mining operations; that the work was conducted skillfully; that the machinery was good. The property of the company was worth $3,000,000, provided they had been protected by the Mexican authorities.

On March 17, 1866, Bartholow wrote to the administrator of rents protesting against the imposition of onerous taxes, in which he says:

> If such a tax as this is imposed upon me, I desire General Corrona to send here an officer empowered with written authority to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, put my goods and property under the protection of the flag of the United States, and from under it I intend they shall be taken (p. 251, Exhibit B).

Special references are made to the letters of superintendents, treasurer, and certain parts of the testimony of witnesses for the reason that in the opinion of the court they have a very important bearing upon the

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condition of the company as it was affected by the acts of the people and the Mexican authorities.

The testimony offered on the part of the complainants in the different exhibits embraces the testimony of a large number of witnesses, some of whom were examined in the form of *ex parte* affidavits and used before the commission, others in Exhibit C were examined in the ordinary mode of taking depositions, and the testimony in Exhibit E embraces the examination in the Senate; the testimony of the respondents in Exhibits A and D embraces the testimony of a large number of witnesses whose testimony is in the form of *ex parte* affidavits in Exhibit A, and the testimony of a number of witnesses taken in the regular manner and embraced in Exhibit D make a record of evidence entirely too large, as has been said, to be dealt with in an opinion.

The cause was most elaborately argued in briefs and in court by the very best counsel upon both sides, exhibiting a most wonderful knowledge of the details of the evidence; it was then reargued in consequence of the death of the late chief justice even more elaborately than in the first trial and by equally competent and able counsel and examined by the court, so that its details of facts, its principles of law and contention of parties are familiar to the mind of the court, and as a result of that discussion and examination we have arrived at the conclusions of fact and law herein announced.

Exhibit A, which contains the testimony before the commission, is in the form of *ex parte* evidence on both sides, and an examination of it will disclose the extraordinary range of inquiry and statement and the large number of witnesses. The most of it was taken by Adams under his agreement with the company and the different persons as agents who represented the Mexican Government. It is no exaggeration to say that few cases in the history of judicial controversy have exhibited such a mass of testimony, competent and incompetent, covering the examination of nearly one hundred witnesses. Witnesses contradicting each other and sometimes contradicting themselves are the marked characteristics of the record in this case.

This being a proceeding in equity, this court is not called upon to settle the facts by the finding of ultimate facts for the consideration of the Supreme Court, but the whole record is transmitted to that court, and the case is to be determined in the Supreme Court upon the law as it shall be adjudged and upon the facts as they shall be found by the decision of the Supreme Court.

That would be so in a case of this kind arising under the ordinary jurisdiction of the Court of Claims, but it is especially true from the provisions of the statute giving us the special jurisdiction to determine the issues of this proceeding. The statute provides for a decree, and not for a money judgment. In the case of *Harvey* v. *United States* (105 U. S. R., 671) it is said:

> The rules touching the effect of the findings of fact by the Court of Claims do not apply to the hearing on appeal from its adjudication on a claim whereof it took cognizance under a special act of Congress, which requires it to exercise equity jurisdiction. This court, on such an appeal, must determine the facts as well as the law applicable thereto.

All the testimony being before the Supreme Court for the purpose of settling ultimate facts from such testimony, we have confined the limits

of this opinion to questions of law, and the determination of the ultimate fact which is, whether the company was compelled to abandon its mines because of the acts of the people of Mexico and the Mexican authorities.

The undisputed facts may be briefly stated as follows: The La Abra Silver Mining Company was duly incorporated by the legislature of New York for the purpose of carrying on the business of mining in Mexico in the year 1865. It purchased a number of mines, took possession of them, and proceeded to develop them by the outlay of a large amount of capital. It continued in the possession of its mines for mining purposes during the latter part of 1865, 1866, 1867, and part of 1868. During those years it mined a large quantity of ore, but did not beneficiate it to any considerable extent. On the 20th of March, 1868, Exall, who was its last legally appointed superintendent, quit the possession of the mines, first having turned them over to Granger, as custodian for the company. Exall arrived in New York some time in April, 1868, and the company paid no further attention to the mines and did not attempt to exercise any control over them or assert any claim to them after the departure of Exall.

After the return of Superintendent Exall to New York, which was some time in April, 1868, nothing was done by the company in asserting its rights until notice by the attorneys of the company to the Mexican agent of its claim on November 30, 1869; notice to the Department of State, March 17, 1870, and the presentation of the claim to the commission, June 14, 1870. After the abandonment of the property of the company, which is alleged to have been on the 20th March, 1868, nothing was done with it, except in so far as it was superintended by Granger, who, as it is insisted, was put in possession of the property of the company without legal authority, he having been designated by Exall on the 26th February, 1868.

It does not appear that any effort was made on the part of the company or any of its officers to bring to the immediate notice of the United States the alleged fact that it had been driven out of the territory of Mexico by the violence of the public sentiment of the people and the failure of the Mexican authorities to protect it in the possession of its property before the notices to the State Department on the 17th March, 1870.

Although the company is not estopped by its failure to assert its rights before that time in bringing to the notice of its own Government the alleged outrage upon its rights, as ultimately asserted in its memorial to the commission, such failure may be properly considered in the determination of the questions of fact material to the correct decision of the principal issue made by the pleadings in this proceeding.

The treaty under which the commission convened, the fact of its meeting on the 31st of July, 1869, were matters of legal and public notoriety, which could not have escaped the attention of persons interested in the property rights of the company, its officers and attorneys; and in view of that, it becomes one of the strange incidents of this controversy that the presentation of the claim, involving more than $3,000,000, should have depended upon what may be construed a casual meeting between Garth and one of the original attorneys in the city of Washington in the autumn of 1869. Aside from the indistinct recollection of Garth

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that he may have heard of the opportunity to present and litigate the claim before that time in a letter from Bartholow in the fall of 1869, it does not appear that it had occurred to any responsible agent of the company to assert its rights in the form of a diplomatic claim against the Mexican Government.

The evidence shows that the legal rights of the respondent, from their inception up to and including the presentation of the claim to the Mexican agent and the preparation of it for the consideration of the commission, were in the care of a gentleman of standing at the bar, fully aware of the legal rights of the company growing out of the charges made in the memorial upon which the rights of the respondent were adjudicated against Mexico.

The evidence shows that the responsible agents of the company in Mexico at the time of the perpetration of the alleged abuses by the Mexican authorities, were not wanting in a firm reliance on the ability and duty of the United States to protect them in the possession and enjoyment of their rights as citizens of the United States in the territory of Mexico.

Bartholow and De Lagnel resisted with firm determination the encroachments and threatened encroachments upon the rights of the company, as they were advised to do from the home office in New York, invoking the presence of the flag of their country, and giving notice to the Mexican authorities that they would appeal to the Government at Washington in case certain demands were enforced.

That being the spirit of the respondent's agents at the time of the alleged invasion of its rights and threatened expulsion from the country, it is somewhat strange that after such expulsion was accomplished, as it is claimed, the officers and agents of the company should be slow in asserting an appeal to their own Government and the tribunal organized for the purpose of redressing such grievances.

In the consideration of the question as to whether the company was driven from its mines by the acts and failures of the Mexican Government, it is proper to consider what it did after the alleged abandonment (as incident to such acts and failures) in coming to a conclusion upon the question as to whether it was compelled as a matter of fact to abandon its mines because of the acts of the Mexican authorities, and whether the acts complained of were sufficient to cause or compel them to such abandonment. The subsequent course of the company through its officers and agents tends to construe from its own standpoint the condition of the company in Mexico as affected by the acts of the Mexican Government.

From the extended range of the testimony, the very able briefs and arguments made on either side by the counsel, extending over many pages, and elaborate oral presentations of the cause, there are evolved two plain issues of fact.

It is asserted in substance by the company in the terms of the memorial that it was seized and possessed of valuable silver mines in Mexico during the years 1865, 1866, 1867, and 1868, and while so possessed the Mexican people and Mexican authorities, by their violence and unlawful interference, compelled it to abandon those mines.

It is averred by the bill in substance and contended by complainants, that the mines were worthless; that the company was not compelled by the acts of the Mexican people or the Mexican authorities to abandon

its mines, but upon the contrary they were abandoned because they were unproductive, and that therefore the award obtained through the medium of the mixed commission was procured by fraud effectuated by means of false swearing and the subornation of witnesses and other false and fraudulent practices. The respondent denies those allegations in substance, asserting the original averments of the memorial.

Under the *Act of June 18, 1878* (20 Stat. L., 144), the Hon. William M. Evarts, Secretary of State, in a report to the President stated that the evidence presented by the Republic of Mexico brought into grave doubt the truth of the testimony as to the amount of damages suffered by the company, and that the honor of the United States required further investigation of the claim, and in that connection said:

> It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

Upon a renewed examination by the Secretary he became confirmed in the opinion that the limits of a further investigation should be confined to the question of a fraudulent exaggeration, and as a result of that opinion that, consistent with the honor and duty of the United States, a distribution might be made of the installment then received, reserving the question as to later installments.

In pursuance of that diplomatic policy, founded upon the showing then made by Mexico, and the belief that the rights of Mexico could be preserved consistent with the honor and duty of the United States by confining the question to the "main imputation" of "fraudulent exaggeration," the distribution was made reducing the fund of the award to the sum of $403,030.08, which is now the amount subject to the decree of this litigation.

At the time the Secretary of State made the order of distribution Mexico had exercised the diligence which resulted in the procurement of the books of the company, and which might have been procured for use before the joint commission by the exercise of like diligence. Upon that, taken in connection with the fact that the "main imputation" was fraudulent exaggeration, the Secretary made the order of distribution. Aside from the eminent ability of the Secretary to deal with a question of grave and delicate diplomatic responsibility, it may be said that, under all the circumstances of the situation, it was a wise course to pursue toward the interests of both parties and the responsible agency of the United States.

The purpose of the complainants in filing the bill and the object of the enactment of the law were to determine the question as to their duty in relation to the money still on hand and undistributed as the proceeds of the award. The statute contemplates that the effect of the decree be confined to the money on hand, and to that extent it partakes of the character of a proceeding *in rem*. It was no fault of the complainants that the award was obtained and the consequent payment of all and distribution of part of the money, exercising, as they did, the wisest and best precaution suggested by the circumstances to protect the interests of Mexico, and yet discharge toward the citizen the delicate and responsible duties of a sovereign.

The complainants having charged in the bill that certain affidavits used before the commission are false and procured by fraudulent practices

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on the part of the company, the failure of the complainants to procure the testimony of such witnesses contradicting the affidavits is insisted by counsel to be material and important; but such failure can only be considered as important in the consideration of the original affidavits and does not affect the rights of the complainants if upon other grounds and by other testimony they are entitled to a finding in accordance with the allegations of the bill. The testimony taken since the filing of the bill is contained in Exhibits C and D, consisting of the depositions of six witnesses for complainants and four for the respondent. While it is important in the consideration of the case, it is not necessary in the opinion to make reference to it beyond what has been done.

The court upon an examination of all the testimony, excluding such portions of it as in the opinion of the court are not competent, determines as a conclusion of fact that the La Abra Silver Mining Company did not abandon its mines in Mexico because of the interference of the people of Mexico and the public authorities of the Mexican Government, or either, but on the contrary that it abandoned its mines because they were unproductive and for the want of money to operate and work the same, and that the award made by the United States and the Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other fraudulent practices upon the part of said company and its agents, and a decree will be entered barring and foreclosing all claim in law and equity on the part of said company, or its agents, attorneys, and assigns to the money received from the Republic of Mexico for or on account of such award.

Having decided that the company was not compelled to abandon its mines because of the acts of the people of Mexico, unrestrained by the Mexican Government, and that it was not compelled to abandon the mines because of the unlawful interference of the Mexican authorities with the property and business of the company, it is not necessary to consider the question of the value of the property of the company at the time of the abandonment.

A decree will be entered in accordance with the conclusions reached in this opinion.

COURT OF CLAIMS.

No. 17917.

(Decided June 24, 1897.)

THE UNITED STATES v. LA ABRA SILVER MINING COMPANY ET AL.

NOTT, Ch. J., dissenting:

When this claim was before the International Commission, the umpire decided that the Mexican Government was "bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities." He also incidentally found that the local authorities had not afforded to the claimants "that protection and assistance which had been promised them by the Mexican Government and to which they were entitled by treaty." In 1879 the diplomatic organ of the American Government, the Secretary of State, "*upon a renewed examination of the matter as laid before him by the Mexican Government*," decided "*that the proper limits of the further consideration* which the honor of the Government should prompt it to give to this award *should confine the investigation to the question of a fraudulent exaggeration of the claim.*" In other words, the Secretary of State decided that the acts of the Mexican officials to these American claimants were such as rendered the Government of Mexico responsible from an international point of view. This decision is rendered unequivocal and unquestionable by the fact that the President, upon the recommendation of the Secretary, then proceeded to deal with the claim upon the basis that the responsibility of Mexico for the acts and inaction of its officers was a question finally settled. He did this by paying out a portion of the award to the claimants and withholding only enough to meet the charge of "fraudulent exaggeration."

The case therefore comes into this court with the international question determined by the umpire and the responsibility of the Mexican Government reasserted by the constitutional and proper diplomatic authority of the United States.

Referring now to the umpire's determination of the preliminary question of governmental liability, it must be conceded that at least one of the witnesses is shown to have been unworthy of belief, except so far as his testimony was corroborated by others, and that many of the alleged grievances were greatly, if not grossly, exaggerated. But the evidence now before the court still leaves a number of facts established as completely as they were supposed to be established by the umpire. The company did exist; it was formed by reputable business men for legitimate business purposes; there was no fraudulent design *ab initio;* they invested a large amount of money in the adventure; they bought these mines in Mexico; they transported to them costly mining machinery; they carried on through the designated years an actual mining business.

As regards the Mexican authorities, there are other things which also remain equally certain. The written orders of Soto, Mora, and Valdespino, which were the only positive uncontroverted evidence before the umpire of the interference of the Mexican officials and the evidence upon which he manifestly relied, remain as well established now as they were then. The superintendent was arrested and imprisoned. (The cause of his imprisonment may have been the personal indignation of the magistrate, as contended by the complainants, but nevertheless their witnesses show that the quarrel, if it was a quarrel, sprang out of the superintendent's perfectly proper management of the company's property in his custody.) Mule trains were stopped; military exactions were made; the civil authorities did interfere with the company's management of its own mines; the company did finally abandon the property.

With these facts still in the record it can not be said that upon this, the main issue in the case, the umpire would certainly have come to a different conclusion. A judgment is not to be set aside because one witness is shown to have been mistaken or to be unworthy of belief or to have sworn falsely if there be evidence enough remaining to sustain the verdict. We may now be satisfied that the witness Granger, an important witness for the claimants, was utterly unworthy of belief and much of his testimony false. But he stood contradicted and impeached by himself before the umpire. His subsequent testimony had been taken by the Mexican Government in the form of four affidavits at different times and was in the case. Nevertheless, the umpire made his award.

As to the action of the Secretary of State upon the same question in 1879, it is sufficient to say that substantially everything which is in the case now was before him then. That is to say, the letter book of the company's agents and the letters of the treasurer in New York were before him; and they were then untainted by the suspicion of having been tampered with or of being imperfect or incomplete. Yet with this evidence before him, evidence which he could not disregard and did not disregard, and which so far affected his mind as to lead him to the conclusion that a prima facie case of fraudulent exaggeration had been made out, he decided upon the international question that the action of the Mexican authorities was an infraction of the rights of American citizens in Mexico, and that for them the Mexican Government must be held responsible.

The complainants contend that the abandonment of the property in Mexico was not caused by the acts of the Mexican officials, but was voluntary, because of the worthless character of the mines and the losses which the business had brought upon the company. Great reliance is placed upon some letters of the treasurer and upon an admission he made in his testimony before a committee of the Senate and upon the inaction of the company in New York. The secret motives of men are something not easy to be established by evidence, and are distinct from what the law knows as an intent. It may be doubted whether the personal motive and intent of an officer or director can be given in evidence against a corporation. He may have thought it best to abandon the undertaking for financial reasons, but other stockholders may have thought otherwise. If it could be shown by the complainants that the company, at a meeting of its directors or stockholders, had resolved to abandon the enterprise and wind up the business, and recall the superintendent, and save

such remnants of property as could be brought away, that would be one thing, and it might be that it would relieve the Mexican Government from a claim for damages, notwithstanding the acts of their officials. But in this case the record discloses another and different thing, viz, that the company took no such action; that they continued to instruct their superintendent to carry on the work as best he could; that they did not recall him; that they did not authorize an abandonment, and that they ultimately lost their property in Mexico by the operation of Mexican laws and the acts of Mexican citizens. The Secretary of State probably held that when a foreign power is guilty of acts which are a sufficient cause for American citizens to abandon their property and leave the country, and those acts are followed by such abandonment, the foreign power can not be permitted to say that it was in consequence of another cause or for another reason.

And here it should be noted that the jurisdictional statute followed the decision of the Secretary of State, and was in furtherance of his views, as may be seen in its preamble. The action of the President and the act of Congress must be construed with reference to each other, and the later, especially, with reference to the earlier. For the President to believe that the Mexican Government might be wholly exonerated, and the award be wholly and absolutely invalidated for fraud, and the claimants ultimately be held to be entitled to nothing, and the Mexican Government be adjudged entitled to have the whole of the award returned to it, and then for the President so believing, immediately, to pay away one-third of it to these same claimants would be foolishness. Such inconsistency can not be attributed either to the President or to the Secretary of State. Neither can it be supposed that in a transaction international in its character Congress intended that the judiciary should review the decision and action of the diplomatic branch of the Government and undo what it had done, and subject the President and Secretary of State in their dealings with a foreign power to the implied censure of American courts. Nor can it be supposed that Congress intended to create by implication a possible equitable liability on the part of the United States to Mexico.

For if the Judiciary should decide that the Mexican authorities were not guilty of the acts complained of, and that the company did not abandon the property because of those acts, and should declare the award to be void, wholly and absolutely, then it must follow that when the President and Secretary of State, with the same evidence of fraud before them, paid away $240,683 to the claimants, it was a wrong done to Mexico; and the United States will then be in the dilemma of either leaving this wrong to Mexico unredressed or of making good the loss from their own Treasury. The statute does not provide for such a liability, nor contemplate it, and nations in international controversies do not submit their own diplomatic acts to such censure. It is indeed inconceivable that the United States, through their legislative branch of the Government, should have intended that the United States should come into their own courts as a litigant, there to allege and maintain that the United States as an international power had committed a wrong against another Government.

It has been repeatedly held that the terms of these jurisdictional statutes, no matter how broad they may be, must not be interpreted so as to impose a liability upon the United States where none may have been

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intended, and that in the construction of such statutes a claim must not be allowed to have meant one thing when it was before Congress and another thing when it comes into court. (*United States* v. *Cumming*, 130 U. S. R., 452.) If in 1879 the Mexican Government had produced and lodged with the Secretary of State evidence, *prima facie*, to show that the written communications or orders of the Mexican officials upon which the umpire relied were forgeries, and if the President had then withheld the whole amount of the award to await the investigation and determination of the charge of fraud and forgery, a case would have been made which would justify the construction now given to the statute by the counsel for the complainants. But no such case existed; no such charge was made; no imputation of forgery has arisen in the trial of the case; and the language of the Secretary of State and the action of the President have never been disavowed. The terms of the statute are broad; but, as in other cases, they must be restricted to the facts and limited to the claim as it existed when the act passed.

From these considerations it appears clear that the present case must be considered as the Secretary of State put it, as one of fraudulent exaggeration. The questions, then, are, What did the umpire allow? What are the items of the award which were obtained by fraudulent practices?

The claimants before the International Commission set up a wildly exaggerated demand for $3,000,030, and their witnesses testified in much the same way; and on the argument before this court the case has been treated much as if the umpire had allowed what these exaggerated statements called for. But such is not the award which is now the subject of consideration. The umpire rejected all conjectural damages and reduced his award to the following five items:

From subscriptions and sales of stock	$235,000.00
Lent and advanced	64,291.06
Due for rent, expenses, salaries, law expenses	42,500.00
Amount derived from reduced ores	17,000.00
Ore extracted from the mines and deposited at the mills	100,000.00
	458,791.06

To the first four items the umpire attached interest at 6 per cent from March 20, 1868, to the date of the final award, and to the fifth item interest from March 20, 1869.

As to the first three of the above items the bill does not charge fraud; as to the fourth, it charges that the amount derived from the reduction of ores "was only $420.09, instead of $17,000 as sworn by the said Exall and allowed by said umpire." As to the fifth item, it charges that instead of the unreduced ores abandoned at the mines "being worth $100,000, as estimated by the said umpire from conflicting statements of witnesses from said defendant company and allowed by the said umpire in his said award, said ores were absolutely worthless." The case is therefore narrowed down to the question whether the *fourth* and *fifth* items of the award were "obtained by fraud."

This question brings us to a consideration of the evidence.

In 1878 the Mexican Government produced and identified the letter book of the company kept at Tayoltita and certain letters from Garth, the treasurer in New York, to Exall, the superintendent in Mexico, and from Exall to Granger. Two years had then elapsed since the final award

of the umpire had been rendered; and on this book and these letters the Mexican Government rested its charge that the award had been obtained by fraud and perjury. After this suit had been begun the Mexican Government also produced, in 1894, certain of the books of account which the company had kept at Tayoltita.

Intrinsic and extrinsic evidence shows that the letter book was incomplete. That is to say, internally there are marks of mutilation, and the correspondence shows that letters were written and received and answered which do not appear to be in the book; and these missing letters coincide more or less with the mutilations in the book. The same thing is true of the letters from Garth, in New York, to Exall, in Tayoltita. That is to say, it is manifest that these are not all of the letters which Garth wrote and which Exall received. The books of account are also incomplete. The most important, the journal, is but a fragment of the entire book, while the other books of the same age and manufacture, and left in the same custody, are in good order. The ore book, showing by daily record the quantities of ore excavated is not produced or accounted for.

It appears that all of the books and papers of the company were left in the possession of and under the control of James Granger, at the company's offices in Tayoltita, by Exall, the superintendent, when he left the mines in 1868. When the Government of Mexico produced the letter book and letters of Garth and Exall in 1878, no evidence was given to account for them, to show the condition in which they were when received; to show in whose custody they had been; to explain why they had not been brought before the International Commission.

It has been urged by the complainants that the Mexican Government was not chargeable with knowledge of the fact that these books were within its own territory and presumably within the reach of the process of the Mexican courts; and it may be that as Governments are not liable for the laches of their agents, this court should not hold a Government to the same exercise of vigilance and diligence which would be required of an individual suitor. But there are some facts appearing on the record of the case as it stood before the umpire which are beyond the scope of the complainants' argument.

On the 14th day of May, 1870, Granger, as a witness for the company, produced before the United States commercial agent at Mazatlan the five orders from Mexican civil and military officers which constituted the vital evidence of the company's case in the hearing before the International Commission. These papers necessarily came from the office of the company and were a part of the mass of papers left in Granger's possession by Exall, and of which he was thenceforth the only known custodian. The Mexican Government was thereby informed that papers of the company existed, and that there was a person exercising a power of custody over them, and that that person was a resident within the territory of Mexico. This testimony, however, was *ex parte*. The Mexican Government had no opportunity to cross-examine, and if the case had stopped at that point would be free from the imputation of laches or neglect.

But fifteen months afterwards, August 23, 1871, Granger, who had twice testified for the company, reversed his policy and his testimony and became a witness for the Government of Mexico. On the 6th of

October, 1871, he was a second time called as a witness by the Mexican Government. On the 23d of July, 1872, he for the third time testified for the Government, and on the 25th of July he gave his testimony for the fourth time. In this last deposition, in answer to the question, "What position or employment did you have in the mining establishment of Abra?" he replied, "At first I was a dependent or clerk; afterwards, when the superintendent, Carlos H. Exall, left, I remained in charge as his representative." Therefore, before the case was submitted to the International Commission, it was apparent upon its record that papers and documents of the company existed in Mexico, and that they were in the hands of a friendly witness.

Furthermore, it appears from the evidence now before us that the Mexican Government agreed to pay Granger $3,500 in consideration of his producing evidence which should lead to the setting aside of the international award. Granger thereby became jointly interested with Mexico in the result, and as much interested in spoliating and withholding records as if the proceedings were an individual suit on his own behalf to recover $3,500. Futhermore, it appears he was an unscrupulous character, who changed his testimony to suit his employers, and who produced from the archives of the company papers on one day for the one party and on another day for the other. Futhermore, it appears that he was an accomplished bookkeeper and a man of unusual ability. Finally, it appears that he had been the bookkeeper and accountant of this same company, familiar with all of its transactions in Mexico, and with all of its litigation before the International Commission, and that he knew precisely what to produce and what to withhold.

The Government of Mexico undoubtedly has produced all of the books and papers which it received from Granger, and in the condition in which they came to its possession. But they, with the other books and papers of the company, were for ten years in the possession of Granger. He was not subjected to examination and cross-examination in regard to them; they came from him in a mutilated and incomplete condition; he had a direct personal interest in producing those which would make for the complainant's case and in suppressing those which would be adverse to it. *Omnia præsumuntur contra spoliatorem.*

It is true that Granger, when testifying for the company in May, 1870, said, "I can not, without access to the books of the company, in New York, state the exact amount of money paid out by the company, as the hacienda has long since been sacked of books, receipts, invoices, and other papers furnishing the necessary data upon which to make anything like an exact statement on the subject." But he had previously produced the letter of Colonel Valdespino and had testified that it had come into his possession as clerk of the company; and he had also produced the orders of Mora, the gefe politico of the district of San Dimas, and of Soto, the juez conciliador, or judge, at Tayoltiti, and had testified that he had received them as clerk of the company and had filed them away with other papers of the kind, and had subsequently turned them over to the attorney of La Abra Company. A year later he had become the witness of the Mexican Government, yet the Government apparently made no effort to pursue the subject and ascertain what books and papers he still had or learn from him or any source what had become of them.

Nevertheless, it seems clear, from evidence which may properly be considered, that the two items of the award now under consideration—$17,000 derived from reduced ores and $100,000 for ores extracted from the mines and abandoned—were obtained by fraud and perjury.

These two items must have rested upon the testimony of Exall, the superintendent, and Granger, the bookkeeper. The one testified that the abandoned ores must have amounted to from 900 to 1,000 tons, which "would have yielded the company, above the cost of reducing them to silver, in my opinion, one million of dollars;" and the other testified that about 7,000 cargas, "a little over 1,000 tons," had been taken out and were abandoned. There were other affidavits cumulative, or perhaps corroborative, but it can not be supposed that a man of Sir Edward Thornton's ability, sagacity, and experience attached any importance to the ex parte affidavits of ignorant Mexican miners taken before an American consul, affidavits which, in the opinion of those who gave them, could have been invested with the obligations of neither law nor religion.

Granger had already contradicted himself when the case was before the umpire, having sworn on the 6th of October, 1871, "that the greater part of the ore taken out by the company is still in the patia of the hacienda, and that it is good for nothing." As this testimony of his was not believed by Sir Edward Thornton, and as he expressed regret that the books of the company had not been produced, it is manifest that he came to a reluctant conclusion upon these items of the award, and depended wholly upon Exall. This becomes the more apparent when we find that he adopted as the amount of money derived from reduced ores the exact figures given by Exall—$17,000. In a word, if the testimony of Exall and Granger drop out of the case, these two items of the award must fall.

It has already been said that Granger discredited himself and was disbelieved by the umpire. But Exall's testimony remained and was relied upon. The letter book before spoken of, though it may be impeached as a whole and may not bind the company as a record of events, does contain letters of Exall utterly at variance with his testimony. It was his right as a witness to be confronted with these letters and allowed to explain them before they could be put in evidence to contradict his previous testimony. He had died when the case came into this court, but before that he had been to all intents and purposes confronted with the record of his correspondence. The counsel for the company, after having seen in Washington a printed copy of the letter book, called upon Exall and stated to him the nature of the letters which had been discovered by the Mexican Government and asked for his explanation.

Exall then made a statement, verified by his affidavit, in which he virtually swears to his own infamy; and that statement has been introduced as evidence in the case by the respondents. Throwing the letters aside and taking the statement in connection with other evidence in the case, it seems incontrovertible that when he testified that the abandoned ores "would have yielded the company, above the cost of reducing them to silver, $1,000,000," and that "about $17,000," derived from beneficiated ores, "was put into the general fund of the company and used in said works immediately before we were compelled to leave," he was giving testimony which he knew to be false. [redacted]

by Granger, though it is not a complete record of the bookkeeping of the establishment and is only visible by showing results, does show beyond a doubt that the net amount of money received from the beneficiated ores, instead of being $17,000, was only $120.00, and the falsity of this part of Exall's testimony is confirmatory of the falsity of the other. The testimony of the other witnesses may have operated to some extent upon the mind of the umpire, and upon their testimony he might have ascribed some value to the abandoned ores, but without Exall and Granger it would have been impossible for him to make these particular awards of $100,000 and $17,000. In a word, the testimony of Exall is the basis upon which the amounts allowed by the umpire rest, and when it drops out of the case as false the two items of award fall with it.

The following are the conclusions which I have reached:

1. The terms of the jurisdictional act are broad, but the power actually conferred is limited. The preamble recites the investigation of the Secretary of State and the action of the President, and indicates that the legislative is to be but a continuation of the executive policy. The first section contemplates a suit which may go to the full length of declaring that the entire award of the umpire was obtained by fraud, but this section relates only to the duties of the Attorney-General and not to the powers or duties of the court. The remedial portions of the statute bring the case back to the fund remaining in the hands of the Secretary of State, the utmost power awarded to the court being to decree that that fund shall either be returned to Mexico or paid to the original claimants. It is manifest that the fund is the entire subject of the suit; that the United States have no interest in the suit except that of trustee or custodian, and that Congress never intended that they should sue themselves in this court and recover a judgment against themselves for the benefit of Mexico.

2. But if it be conceded that the decision of the court may go to the full length of "determining" that the entire award of the umpire was obtained by fraud, it would not follow that the court can redetermine the international issue. And if it be conceded that the complainants can make a new claim here differing from the claim reported by the Secretary of State, the claim for exaggerated damages, and attack the international decision of the umpire, it would not follow that they can retry the same issue. On the contrary, there is but one way by which they can have the international question reexamined, and that way is by alleging and proving that the orders and letters of the Mexican officials upon which the umpire relied, and which made the international case presented to him, never existed, and that the award was obtained by fraud effectuated, not by perjury, but by forgery.

3. It may also be conceded that the complainants might have shown, within the intent of the statute, that the entire award was obtained by fraud, notwithstanding that a portion of it has been paid to the defendants, and notwithstanding the limited decree which the court is empowered to render; but there was only one way in which they could have done that, and that way was by alleging and proving that the stockholders of the company never advanced any money in the enterprise; that there never were sales of stocks or subscriptions paid in amounting to $235,000; that no one lent and advanced to the company $64,291.06;

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that there was not due for rent, expenses, and salaries, $42,500; that $17,000 was not derived from reduced ores, and that the ores extracted from the mines and deposited at the company's mill were wholly valueless. That is to say, if the complainants could have shown that the whole enterprise was a fraud from the beginning; that there was no money whatever invested by the stockholders of the company; that the alleged subscriptions and payments were false and fraudulent; that adventurers purchased the mines with the worthless stock of a worthless company; that they operated the mines by means of credit obtained or money borrowed from Mexican citizens; that, in short, they advanced nothing and lost nothing, then the complainants would have made out their case as to the whole of the award. But what they might have done directly they can not do by indirection, by reopening the international controversy and unsettling that which has been settled both by the award of the umpire and the decision of the President. The question for this court to determine is not whether Mexico was or was not blameless, but whether this specific award of the umpire, item by item, in whole or in part, was or was not obtained by fraud.

4. Under his primary decision that the Mexican Government must be held responsible for the acts of its officials, the umpire decided that the company should recover not the millions which it was seeking as the value of the property and the profits which it might have made, but simply the amount of its expenditures and liabilities and the supposed value of the extracted ores. This was the umpire's rule for the measure of damages. It may not have been the rule which this court would apply to a similar case, but it was his rule, and it can not be reviewed or questioned here, and it became the law of the case as completely as if it had been written in the treaty. Accordingly, it must now be held that what the company did recover was what it was entitled to recover, unless the complainants have shown that one or the other of the specific items, in whole or in part, was obtained by fraud effectuated by perjury.

The complainants, not having attacked the first three items, they must stand; the fourth was fraudulently exaggerated, and it should be reduced to $420.09; the fifth has been utterly overthrown.

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IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
THE LA ABRA SILVER MINING COMPANY. } No. 17,917.

Decree.

The court, finding from the evidence that the award made by the United States and Mexican Mixed Commission in respect to the claim of said company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other false and fraudulent practices on the part of said company and its agents; it is therefore hereby ordered, adjudged and decreed that all claims in law and equity on the part of the said company, its legal representatives and assigns, be forever barred and foreclosed of all claim to the money received from the Republic of Mexico for or on account of such award.

Filed June 24, 1897.

IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.*
} In Equity. No. 17,917.

Motion for Allowance of Appeal.

Comes now the defendant, La Abra Silver Mining Company, by Crammond Kennedy, its solicitor and of counsel, and moves the court to allow an appeal on the part of the said defendant from the decree of the court rendered on the 24th of June, 1897, in this cause, to the Supreme Court of the United States, as provided in the act of Congress, approved December 28, 1892.

CRAMMOND KENNEDY,
Solr., and of Counsel with La Abra Silver Mining Co.

SEPTEMBER 14, 1897.
Filed September 14, 1897.

The appeal is allowed.

C. C. NOTT,
Chief Justice.

SEPT. 16, 1897.

COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.*

In Equity.
No. 17,917.

Stipulation.

To save expense in printing the Record for the Respondents' appeal in the above entitled cause to the Supreme Court of the United States, it is hereby stipulated as follows:

In lieu of inserting in the Record the evidence appended to Senate Report No. 2705, Fiftieth Congress, second session, making nine hundred and seventy-one printed pages, only so much of said evidence as either appellants or appellee may print in their or its brief for the hearing of the appeal in said cause in the Supreme Court of the United States shall be used by counsel on said hearing, but nothing herein contained shall prevent the said court from consulting and using any part of the said evidence it may see proper, whether such part has been referred to by counsel or not, subject, however, to the objection of Respondents' counsel that so much of said evidence as consists of the testimony of witnesses who have not been examined in this cause is not admissible.

In witness whereof we have hereunto subscribed our names this 13th day of October, in the year one thousand eight hundred and ninety-seven.

WM. A. MAURY,
Special Asst. to the Atty. Genl.,
for the Complainant.

CRAMMOND KENNEDY,
Of counsel with La Abra Co.
and other Respdts.

Filed October 13, 1897.

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IN THE COURT OF CLAIMS.

THE UNITED STATES
vs.
LA ABRA SILVER MINING COMPANY *et al.* } In Equity. No. 17,917.

I, John Randolph, Assistant Clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause,—of the order of the court overruling demurrer,—of the evidence for complainants and respondents and stipulations of the said parties relating thereto,—of the opinions of the Court and the dissenting opinion,—of the decree of the Court,—of the application of the respondents for allowance of an appeal to the Supreme Court of the United States and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims in the city of Washington, this 28th day of October, A. D., 1897.

[SEAL OF THE COURT OF CLAIMS.]

JOHN RANDOLPH,
Ass't Clerk of Court of Claims.

Endorsed on cover: Case No. 16,711. Court of Claims. Term No., 498. La Abra Silver Mining Company, appellant, *vs.* The United States. Filed October 29th, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

LA ABRA SILVER MINING COMPANY,
APPELLANT,
vs.
THE UNITED STATES,
APPELLEE.
No. 189.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON THE QUESTION OF THE VALIDITY OF THE APPROVAL OF THE ACT APPROVED DECEMBER 28, 1892.

The question presented in this brief is, whether, under the provisions of Section 7, Article I, of the Constitution, the President may approve a bill after the adjournment of Congress, such adjournment having taken place under the provisions of the last clause of Section 5 of Article I, to wit, by concurrent resolution of both Houses.

It appears that the bill in question was approved December 28, 1892. It further appears that Congress, on

the 22d day of December, 1892, adjourned until January 4, 1893, in pursuance of the following resolution:

"*Resolved by the House of Representatives (the Senate concurring)*, That when the two Houses adjourn on Thursday, December 22, they will stand adjourned until Wednesday, January 4, 1893."

The language of the Constitution is:

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal and proceed to reconsider it. * * * If any bill shall not be returned by the President within ten days, (Sundays excepted), after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, *in which case it shall not be a law.*" (Section 7, Article I, Clause 2.)

ADJOURNMENT.

The Constitution makes the following provisions on the subject of adjournment:

"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." (Section 5, Article I, Clause 4.)

The 3d clause of the 7th section of Article I provides that every order, etc., to which the concurrence of the Senate and House of Representatives may be necessary, *except on a question of adjournment*, shall be presented to

the President of the United States, etc. And the 3d section of Article 2 provides that in case of disagreement between them (the two Houses of Congress) with respect to the time of adjournment, he (the President) may adjourn them to such time as he shall think proper.

These are the constitutional provisions with respect to adjournment.

We contend that no power exists on the part of the Executive to approve a bill after the adjournment of the two Houses of Congress; and we further contend that the adjournment mentioned in the Constitution is an adjournment by concurrent resolution, to wit, an adjournment of Congress, *i. e.*, both Houses, and it is immaterial whether it be for ten days or ten months, so long as it is an adjournment upon which the Constitution requires the action of *both Houses*, or that of the President in case of their disagreement, in order to make it effective.

FIRST.

The approval by the Executive of a bill passed by the two Houses of Congress is a legislative function. In approving bills the Executive does not perform an executive but a legislative act. The President in signing bills actively participates in legislation; as such he is a branch of the legislature. He is a component part of the law-making power. In order to make a law under the Constitution the Senate, the House, and the President must concur.

And this view has been generally, if not universally, taken by writers on our public law. Judge Pomeroy says the President legislates; his approval or disapproval of proposed legislation is a process of creating, not of executing laws. By virtue of the various provisions of the

Constitution the Congress is, in fact, though not formally in terms, composed of three distinct bodies, the President, the Senate, and the House of Representatives, and all must concur * * * in order to make a law.

Pomeroy's Const. Law, Sec. 174–175.
Kilbourne *v.* Thompson, 103 U. S. 168.
Cooley's Con. Lim., Marg. of p. 153.
Fowler *v.* Pierce, 2 Cal. 167.
Hardee *v.* Gibbs, 50 Miss. 803.
The Federalist, No. 47.
Blackstone's Commentaries, 184–185.
Anson, Laws and Customs of the Const., 284–287.
State *v.* Mounts, 36 W. Va. 186.
Annals of Congress, Vol. I, p. 463.

The President's power in disapproving bills is not simply revisory; it does not merely refer them back for further consideration. He gives or withholds his approval, without which the act is inchoate. That is a function of legislation, and though his veto (I forbid) is less potential than was that of the King of England, the quality is precisely the same. While the veto of the King ended the proposed legislation, the veto of the President requires the concurrence of two-thirds of each of the Houses of Congress to overcome it.

People *v.* Bowen, 30 Barb. 24; same case, 21 N. Y. 517.

If it is true that the President acts as a part of the legislature in his approval or disapproval of proposed legislation, it seems to us that it follows conclusively that he must act during the time that the legislature is in session, and we cannot see either upon principle or authority how it can be contended that the President's action on proposed legislation can be otherwise than a

legislative act. It certainly is not executive. He is not dealing with the execution of the law, for there is nothing to execute. He is dealing entirely with what may or may not be the law in the future. Nor does the case of Seven Hickory *v.* Ellery, 103 U. S. 423, militate against this view. That decision was based upon entirely different language from that contained in our Constitution.

SECOND.

By the spirit, as well as the letter of the Constitution, the President should have the right to veto as well as the right to approve, and when deprived of one the other fails. The Constitution does not mean that the President must sign the bill within ten days if Congress remains in session, but if it adjourns he can sign it whenever he likes.

Such a construction would have to be given to the Constitution in order to sanction the approval of a bill after Congressional adjournment.

The ten-day clause is a limitation of the time within which the President must act during the session, and it is illogical to say that the Congress can extend that time indefinitely by adjournment. The language of the Constitution seems to put it beyond doubt that if Congress, by its adjournment, prevent the return of a bill it shall not be a law. If the last nine words, to wit, "in which case it shall not be a law," were omitted, it would be much easier to give the construction contended for by the Government; but they were put there for some purpose.

"In which case," that is, in case of the adjournment of Congress, "it shall not be a law," whether the President signs it or not. It does not say it shall be a law if the President signs it, but it says it shall *not be a law*, without any qualification. Presidential approval cannot aid

it, because he is no longer a part of the legislature. The legislature is not in session and his signature at such a time is a mere personal act, not a legislative one. The spirit and intent of the Constitution was to give the President a chance to consider and to exercise his judgment as to the *approval* or *disapproval* of a bill which passed Congress. When Congress takes away from him the right to *disapprove* he is not bound to examine the bill at all, nor did the Constitution intend that he should. *It operates as a withdrawal by Congress of the proposed legislation.* Nor can it be claimed that during a short adjournment the President might return a bill with his objections and deliver it to an officer of either House. There is no sanction in the Constitution for any such thing as that. In fact, it is very clear from the language of the Constitution that such a thing could not be done, because if the President could return a bill to an officer of the House, and its delivery to such officer would be a sufficient return, the clause in the Constitution with respect of an adjournment of Congress preventing its return would be utterly futile; for if it could be returned to an officer of the House, an adjournment of Congress could never prevent its return. There is always an officer of the House, and hence that clause of the Constitution would be meaningless.

THIRD.

Our entire history shows that from the beginning of our Government, it has always been considered necessary that every step connected with the enactment and approval of a law should be taken before the adjournment of Congress. The historical precedents upon this subject are collated in an article by Mr. Renick published in the 32d

American Law Review, page 208. It appears that the first time this question was raised—that is, the power of the President to approve an act after Congressional adjournment—occurred during President Monroe's administration in 1824, when it appeared that some forty or fifty bills were submitted to him on the last day of the session, and one of these he had inadvertently failed to sign. On the opinion of his cabinet, Wirt being Attorney-General, it was decided that he had no power to sign it.

8th Memoirs of J. Q. Adams, 104.

6th Memoirs of J. Q. Adams, 379, 381.

7th Memoirs of J. Q. Adams, 233–234.

Thus the rule obtained from the foundation of the Government up to the present time, with the single exception of the Captured and Abandoned Property Act approved on the 12th of March, 1863. The House of Representatives having been apprised that the bill in that case had been approved after the adjournment of Congress, ordered its Judiciary Committee to inquire and report whether said act was in force, and the House Judiciary Committee, on the 11th of June, 1864, reported to the House of Representatives that the act referred to is not in force, and in that conclusion the Committee were unanimous. The report of the Committee is inserted here as matter of argument.

APPROVAL OF THE ACT OF MARCH 12, 1863.

June 11, 1864. *Referred to the Committee of Ways and Means, and ordered to be printed.*

Mr. Wilson, from the Committee on the Judiciary, made the following report:

The Committee on the Judiciary, to whom was referred the subject of the approval of the act of March 12, 1863,

report: By resolution of the House of May 16, 1864, it was ordered, "That the Committee on the Judiciary be instructed to inquire and report to the House by what warrant or authority the act entitled 'An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States,' was approved on the 12th day of March, 1863, and whether said act is in force."

On the reception of this resolution the Committee caused a note to be addressed to the Secretary of State, asking to be informed whether, as a matter of fact, it appeared on the original files in the State Department that the act referred to was approved on the 12th day of March, 1863. In reply to this note, the Secretary of State responded that the original act is to all appearances regular in every respect of form. As to the date of its approval, that of the 12th day of March, 1863, the words and figures "approved March 12, 1863," are in the handwriting of the President and followed by his signature. Thus it appears from the original files in the State Department that such act was approved March 12, 1863, and this is true in fact as to the date of the approval.

The section of the Constitution of the United States bearing upon this question reads as follows:

"If any bill shall not be returned by the President within ten days, Sundays excepted, after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless Congress by their adjournment prevent its return, in which case it shall not be a law."

The Committee are informed that in the great press of business immediately preceding the adjournment of Congress on the 4th of March, 1863, the act which is made the subject-matter of inquiry by the resolution of the House was passed to the Secretary of the Treasury for examination, as it related particularly to his department. It did not reach the President again until after the adjournment of Congress, when it was approved by him under the belief that the last clause of the section of the Constitution above quoted was designed more

especially to prevent Congress from enacting laws without the approval of the Executive, which might be done by the passage of bills by the two Houses followed by an adjournment before the President could examine and return them, were it not for the declaration that in such cases the bills shall not be laws, and did not relate to cases wherein the Executive should approve bills sent to him by Congress within ten days, even though an adjournment should occur before the return of the bills. That there is force and plausibility in this position a little reflection will discover to any mind, but the Committee cannot receive it as a correct interpretation of the Constitution.

The ten days' limitation contained in the section above quoted refers to the time during which Congress remains in session, and has no application after adjournment. Hence, if the Executive can hold a bill ten days after adjournment and then approve it, he can as well hold it ten months before approval. This would render the laws of the country too uncertain, and could not have been intended by the framers of the Constitution. The spirit of the Constitution evidently requires the performance of every act necessary to the enactment and approval of laws to be perfect before the adjournment of Congress.

The Committee therefore conclude that the act referred to, approved March 12, 1863, is not in force, and in this conclusion the Committee are unanimous.

FOURTH.

The practical construction, thus almost uniformly given, from the foundation of the Government ought to be controlling on a matter of construction.

French *v.* State, 141 Ind. 618.

Guergin *v.* McAllister, 88 Texas, 284.

Miller on the Constitution, 187.

Some stress has been laid upon the fact that the Captured and Abandoned Property Act had been before

the Supreme Court in a number of instances and property had been passed and the provisions of the act construed by this court. While this is true, it is also true that the law on its face was valid, and no question of its validity was ever raised. No one whose rights were affected by the act has ever attacked its validity before this court, so that the question was never presented to this court for consideration, and it seems to us that it is no argument to say that because the court did not go out of its way to pass upon the constitutionality of that act, that therefore its constitutionality was affirmed.

Cooper *v.* Telfair, 4th Dall. 721.
Nashville *v.* Cooper, 6th Wall. 247.
Cooley's Const. Law, 5th edition, 196–197.

But it must be observed in this connection that the act of July 2, 1864, 13th Statutes, 375, was a practical re-enactment of the act of March 12, 1863, and further, the act of March 12, 1863, was embraced in and re-enacted in the Revised Statutes in 1873, so that before any case had reached the Supreme Court involving the construction of the act of March 12, 1863, the subsequent statutes had re-enacted it, first, substantially, and second, identically, and it would have been futile in view of the act of July 2, 1864, to have raised any question as to the validity of the act of March 12, 1863, when that act first came before the Supreme Court for consideration.

We respectfully submit, therefore, that the act approved December 28 1892, granting to the Court of Claims jurisdiction to hear and determine the questions involved in this litigation, is void for the reason hereinbefore set forth.

JNO. C. FAY,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED
NOV 26 1898
JAMES H. McKENNEY

No. 189. 29.

Brief of Kennedy, Wilson, Fay

Renick for Appellant

Supreme Court of the United States.

Filed Nov. 26, 1898.

October Term, 1898.

LA ABRA SILVER MINING COMPANY,
Appellant,
vs.
THE UNITED STATES,
Appellee.
} No. 189.

On Appeal from the Court of Claims.

Brief on the Questions of Law, and Argument on the Facts for the Appellant.

CRAMMOND KENNEDY,
Solicitor and of Counsel for the Appellant.

J. M. WILSON,
JNO. C. FAY,
E. I. RENICK,
of Counsel.

McGILL & WALLACE, LAW PRINTERS, Washington, D. C.

ERRATA.

After line 9 in the *note* on page 15, insert (*Ib., p. 66.*)

On page 25, after the third paragraph, insert:

On the 7th of July, 1886, Mr. Edmunds, for Mr. Morgan, reported a bill from the Foreign Relations Committee (S. 2208), "to amend and enlarge the 5th section of an act approved June 18, 1878." There was a minority report by Mr. Brown. (Rep. 1454 and Views of the Minority, Sen., 49th Cong., 1st Sess.) The bill authorized and directed the Attorney General—

> "to bring a suit or suits in equity, in the name of the United States, in the Supreme Court of the District of Columbia against La Abra Company, its legal representatives or assigns, to determine whether the award was obtained * * * by fraud on the part of the said * * * Company, or its witnesses, agents, attorneys or assigns, and to recover any part of said money which may have been paid by the United States on account of said award or claim to said La Abra * * * Company, or other persons claiming under it."

Full jurisdiction was to be conferred on the Supreme Court of the District "to hear and determine such suit as a suit in equity," and "to proceed in all respects according to law and the rules of practice in chancery which obtain in other equity causes." The third section granted an appeal to this court, and authorized it "to take jurisdiction thereof and decide the same." The President was authorized to release the Government of Mexico from further payment to the extent that the award should be adjudged fraudulent, and to return to said government any money that might be recovered in said suit, and also any money paid by the Government of Mexico on account of said award and remaining in the custody of the United States.

On page 32, line 25, no quotation marks.

On page 64, line 29, "1 Cr., 63" should be *1 Cr., 165, 166.*

On page 65, line 33, "13 Pet., 417," should be *13 Pet., 420.*

On page 83, 6th line, "13 How," should be *17 How., 349, 351.*

On page 83, line 28, "could" should be *would.*

On page 98, line 5, "115 U. S." should be *116 U. S.*

On page 142, 4th line from the bottom, for "Brackenridge" read *Rowan.*

On page 143, line 17, for "Brackenridge" read *Rowan.*

On page 161, line 11, "award" should be *awards.*

On page 170, line 12, "claims" should be *claim.*

SYNOPSIS.

Explanatory Note: How the different sets of testimony have been taken, and the sense in which the words "depositions" and "affidavits" are used.

PAGE.

History of the case **1-31**

I. The Court of Claims has no jurisdiction over this matter, because it is not a "case" within the meaning of the Constitution, nor is it a "controversy" to which the United States is a party **31-47**

Act analyzed; "case" defined; can not be made up; must arise 31, 32
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Explanatory Note.

The words "affidavits" and "depositions" are used interchangeably in describing the testimony in this case. Shortly after its organization, the United States and Mexican Claims Commission rescinded the rules it had adopted for the examination of witnesses, because, upon further consideration, the Commissioners were of opinion that the subject was outside of their jurisdiction, as under Article II of the Convention it was provided that the Commissioners should proceed to the investigation and decision of the Claims in such order and manner as they might conjointly think proper,—but upon such evidence or information only as should be furnished by or on behalf of their respective governments. (*Vide* Journal of Commission in the Department of State.)

The testimony before the Commission was taken *ex parte*, on both sides, mostly in the form of questions and answers (the Company's witnesses being sworn by some competent officer who certified to their credibility), but each side had the right to re-examine the other's witnesses, and the Mexican government exercised this right in re-examining Avalos, Del Valle, and Granger (the last-named four separate times), after they had been examined for the Company.

The witnesses for Mexico were examined under oath in the Mexican courts, mostly in the court of first instance at San Dimas, upon written interrogatories, and certified copies of these examinations were filed with the Commission. (*Record*, 106, *Note.*) Mexico's witnesses, whose testimony is comprised in "the newly-discovered evidence," were examined in the same *ex parte* way. The witnesses in the Senate investigation were sworn and examined in the usual manner, and so were the witnesses who have testified in this suit.

Congressional documents relating to the case are cited and extracts from them are given, under stipulations between the parties. (*Record*, 316,854.)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

LA ABRA SILVER MINING COMPANY
vs.
THE UNITED STATES.
No. 189.

BRIEF FOR THE APPELLANT.

History of the Case.

The appellant, La Abra Silver Mining Company, filed its certificate of incorporation, under the laws of the State of New York, on the 21st of November, 1865, for the purpose of carrying on the business of mining and smelting argentiferous and other ores at Tayoltita, in the mineral district of San Dimas, State of Durango, United States of Mexico. (*Record*, 24.)

In the spring of 1865, David J. Garth, who afterwards became treasurer of the Company in New York, and Thomas J. Bartholow, who was its first superintendent in Mexico, visited and inspected certain mines in the vicinity of Tayoltita (*Record*, 167), which they purchased for themselves and their associates, and subsequently conveyed to the Company. (*Record*, 28.) This conveyance included the haciendas San Nicolas and Guadalupe, and the mines known as Rosario, Luz,

Cristo, Ynocentes, Arrayan, and 550 feet of the Guadalupe mine. (*Ib.*) The price paid for this property in gold was $50,000, and $7,000 for the stock and fixtures of the store. (*Record*, 67, 167.) The Company also purchased 22 equal undivided 24th parts of La Abra mine for $22,000, gold, for which the owners took shares of the Company's capital stock at par to the same amount, and also subscribed and paid for other shares at par in gold. (*Record*, 38, 167, 212.) The title of the Company to the mines it claimed to own is admitted by the complainant. (*Record*, 647, "Stipulation.")

All the shares subscribed for—namely, 1,570 for $100 each—were taken at par on a gold basis, and produced $235,000 in United States currency.* (*Record*, 169, 175, 653, 654, 678.)

The Company put up reduction works and other buildings at Tayoltita, and transported a stamp mill and machinery from Mazatlan, over the mountains, to the mines, and extracted large quantities of ore, the reduction of which was commenced at the mill in the spring of 1867. The expenditures and liabilities of the Company incurred in these operations—including the purchase price of the mines and the conduct of the business in New York—amounted to $341,796.06, reckoning gold, in which the expenditures were mostly made, at 150 in United States currency.† (*Record*, 9, 38, 39, 746.)

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*The following is from Mr. Ely's testimony in the Senate investigation, February 27, 1889:

> "A. I knew distinctly that it was currency. He (Mr. Collins) told me the $235,000 was currency. That was the only proper way to state it in New York. When you say a dollar there you mean currency. I did not know how the Commission was going to render this award, gold or currency, or what not. I knew nothing about that." (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 969.)

†It is stipulated in this suit "that from March, 1865, to March, 1868, gold was at an average premium of 50 per cent. or thereabouts, in New York." (*Record*, 746.)

The local magistrates were hostile to the Company and unlawfully interfered with the conduct of its business at Tayoltita (*Record*, 31, 35, 36, 41, 44, 45, 47, 52, 75, 78, 81, 82, 87, 88, 104, 112, 154, 171); the Company's supply trains were seized by military officers and large sums were exacted and paid for their release (*ib.*, 31, 35, 47, 56, 58, 62, 72, 74, 171); two of the Company's trainmasters (one of them a citizen of the United States) were murdered (*ib.*, 47, 49, 52, 56, 60, 63, 72, 74, 171, 172); the Company's ores at the mouth of the mine and on the "patio" were stolen (*ib.*, 32, 49, 57, 61, 83, 88, 98, 152, 185, 186); orders and threats of ejectment were unlawfully made by the Prefect at San Dimas and the local magistrate at Tayoltita (*ib.*, 49, 52, 54, 72, 73, 124, 125, 129); Judge Soto unlawfully seized some land belonging to the Company and put up reduction works on it (*ib.*, 123—"4thly"—278, 279); the Company's superintendent was unlawfully imprisoned in January, 1868, and, after appealing in vain to the higher authorities of the State of Durango for protection and redress, he was forced to abandon the Company's property and business late in February or early in March, 1868 (*ib.*, 31, 48, 61, 68, 69, 70, 83, 87, 119, 120, 128, 129, 152, 154, 155, 156, 655, 656, 712, 713); the local officials afterwards asserted that they had driven the Company away, and would never let it return (*ib.*, 49, 50, 57, 58, 69, 70, 73, 74, 84); and Judge Soto moved with his family into the Company's hacienda and took possession of its property when Exall left (*ib.*, 51, 52, 165, 179, 185).

A Convention for the settlement of claims was concluded between the United States and Mexico on the 4th of July, 1868, and proclaimed by the President on the 1st of February, 1869. This Convention provided (Art. I) that—

"All claims on the part of corporations, companies,

> or private individuals, citizens of the United States, upon the government of Mexico, arising from injuries to their persons or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the Government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo between the United States and the Mexican Republic of the 2d of February, 1848, and which yet remain unsettled, as well as any other such claims which may be presented within the time hereinafter specified, shall be referred to two Commissioners—one to be appointed by the President of the United States, by and with the advice and consent of the Senate, and one by the President of the Mexican Republic." (Treaties, 1776–1887, pp. 700–703.)

Each claim was to be considered separately by the Commissioners, and, when they could not agree, it was to be referred to an Umpire, and a decision, whether of the Commissioners jointly or of the Umpire on their disagreement, was to be given upon each claim in writing. The Presidents of the two Republics solemnly and sincerely engaged to consider the decision of the Commissioners, or of the Umpire, as the case might be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever. (*Ib.*, Art. II.)

Awards were to be made to the citizens of the respective countries for the amounts allowed, respectively, on their claims, and payment was to be made to their respective Governments, with a proviso that—

> "The total amount awarded in all the cases decided in favor of the citizens of the one party shall

be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of three hundred thousand dollars, shall be paid at the city of Mexico or at the city of Washington, in gold or its equivalent, within twelve months from the close of the Commission, to the Government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of this Convention. The residue of the said balance shall be paid in annual instalments, to an amount not exceeding three hundred thousand dollars, in gold or its equivalent, in any one year until the whole shall have been paid." (*Ib.*, Art. IV.)

The Commission was organized in Washington, with Mr. William Henry Wadsworth, of Kentucky, as Commissioner on the part of the United States, and Mr. Francisco Gomez Palacio as Commissioner on the part of Mexico; and it held its first meeting on the 31st of July, 1869. Mr. J. Hubley Ashton was agent for the United States, and Mr. Caleb Cushing was agent for Mexico. Dr. Francis Lieber was the first Umpire, and on his death, in October, 1872, was succeeded by the British Minister, Sir Edward Thornton, his government having consented to his assumption of the office, which he held till the close of the arbitration.

On February 23, 1870 (before La Abra Company's memorial was filed with the Commission), Mr. Fish, as Secretary of State, issued a circular in which (after referring to the provision of the Convention allowing eight months from the first meeting of the Commissioners for the presentation of claims which had not been previously presented to either Government) he gave the following notice:

"It is not, therefore, to be inferred from the fact of presentation that the Government thereby expresses any opinion upon the merits of the claims

presented, either as regards the facts of the case, which, in most instances, remain to be fully developed before the Commissioners, and of which the Department, therefore, can not judge, or as regards the principles of the law to be invoked in their support. The responsibility of deciding questions of fact and law rests with the Commissioners, but it has been and is the purpose of this Department to interpose no obstacle to the submission of any claim with such proofs and arguments in its support as the claimants may furnish." (*Record*, 742, 743.)

The Company's claim was submitted to the Commission by a memorial verified on the 14th day of June, 1870, notice of the claim having been previously given to the Mexican agent on the 30th of November, 1869, and to the Department of State on the 17th of March, 1870. The letter of the Company's attorneys to the Mexican agent (Mr. Caleb Cushing) giving him notice of the examination of witnesses for the Company and offering them for cross-examination, is printed, together with Mr. Cushing's reply.* (*Record*, 667, 668.)

The Company's claim was docketed as "*La Abra Mining Company* v. *Mexico*, No. 489."

Evidence was taken, *ex parte*, on both sides—26 witnesses being examined for the Company and 34 for Mexico. A considerable part of the Company's evidence

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*Senators were misinformed on this point during the debate on the bill (now the jurisdictional act), as is shown by what follows:

"Mr. MORGAN. The first appearance of the claim was before the Commissioners while they were in session, late in the progress of their investigations. Nobody knew about it till then." (*Congressional Record*, January 21, 1892, p. 461.)

After stating the number of claims against Mexico—894—which had been filed with the Commission prior to March 31, 1870, and the number—123—which were filed within the next three months, ending June 30, 1870, Mr. Morgan said:

"It will be observed that neither the Weil claim nor the La Abra claim has as yet come in. They were filed without having been previously notified to either of the governments."

was filed with its memorial, June 14, 1870. Mexico's evidence, in opposition, was filed October 30, 1873. The Company's evidence in rebuttal was filed October 3, 1874. The case was subsequently argued before the Commissioners, and their disagreement announced in written opinions May 19, 1875 (*Record*, 7; 382–406), whereupon the case was referred to the Umpire, before whom it was also argued, and he rendered an award in favor of the Company December 27, 1875. (*Record*, 8–10.)

A motion for a rehearing, with an argument of over fifty printed pages, was filed with the Umpire on the 19th of September, 1876, and denied by him on the 20th of the following month. (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 73–128.)

It was charged in the trial of the case before the Commission, and stated in the opinion of the Mexican Commissioner, that much of the Company's evidence was false and was obtained by fraudulent practices on the part of General Alonzo W. Adams, who was employed by the Company to obtain evidence in support of the claim in Mexico. (*Record*, 405, 406, 413.) The testimony of various witnesses was before the Commission on this subject, some impeaching and others defending General Adams' conduct (*ib.*, 111, 113, 128, 162–164, 178,

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After referring to the various extensions of the time granted to the Commission, Mr. Morgan said that—

> "It took three additional conventions to cover, not merely the claims that had been presented under the original convention and in pursuance thereof, but to cover the enormous raft of claims that came in afterwards, unindorsed and unvouched by either of the governments." (*Congressional Record*, January 27, 1892, p. 585.)

But every one of these additional conventions provided—

> "that nothing contained in this article shall in anywise alter or extend the time originally fixed in the said convention for the presentation of claims to the Mixed Commission." (Treaties, 1776–1887, pp. 706, 707, 708.)

179, 189–191), and after the case had been pending five years an award was rendered in the Company's favor as aforesaid.

The Commission was extended from time to time, so that it finally expired on the 31st of January, 1876, but the Umpire was "allowed a further period, until the 20th day of November, 1876." (Treaties, 1776–1887, p. 710.) The date of the last award made by the Umpire—*Garza* v. *Mexico*—was July 31, 1876, and it was to this date that interest was reckoned when allowed by the Umpire "to the date of the final award." (Mr. Ashton's Report, Ex. Doc. No. 31, Sen., 44th Cong., 2d Sess., p. 6.)

The Mexican agent attempted to file a statement at the close of the Commission, reserving—

> "the right to show at some future time and before the proper authority of the United States that the claims of Benjamin Weil, No. 447, and La Abra Silver Mining Company, No. 489, both on the American docket, are fraudulent, and based on affidavits of perjured witnesses."

But the agent of the United States would not consent, and when Mr. Mariscal addressed Mr. Fish on the subject, the latter replied, under date of December 4, 1876, declining—

> "to entertain the consideration of any question which may contemplate any violation of or departure from the provisions of the Convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award." (Ex. Doc. 103, H. R., 48th Cong., 1st Sess., 131.)

To this Mr. Mariscal replied, on the 8th of December, 1876 (*ib.*, 131)—

> "that if such an appeal should be made, it will not be resorted to as a means of discarding the obli-

gation which binds Mexico, and that, should it prove unsuccessful, the Mexican government will recognize its obligation as before."

But by the following agreement—which was produced in evidence twelve years later—the Mexican government gave a third party and his employés a contingent pecuniary interest in the success of its "appeal." (*Record*, 434, 435; Rep. No. 2705, Sen., 50th Cong., 2d Sess., 915):

"This agreement, made this twenty-ninth day of March, A. D., 1877, by and between General James E. Slaughter, of Mobile, Ala., party of the first part, and Señor Don Ignacio Mariscal, Minister of Mexico to the United States, party of the second part:

"Witnesseth, that the said party of the first part agrees, for the considerations hereinafter named, to undertake the proof of fraud in the claim of the La Abra Mining Company against the Government of Mexico, which claim is numbered four hundred and eighty-nine (489) on the docket of the Joint Commission of the United States and Mexico, and has been adjudicated by the Umpire of said Commission.

"To this end the said party of the first part agrees to send an agent to Mexico for the purpose of securing testimony in proof of the fraudulent character of said claim; to pay the expenses of such agent as far as the City of Mexico; and to secure such assistance as may be necessary in preparing the evidence so obtained and presenting the same to the proper authorities of the Government of the United States.

"The said party of the second part, acting for and in behalf of the government of Mexico, hereby agrees to secure the payment by said government of all expenses incurred by the said agent of the party of the first part, after he shall have arrived in the City of Mexico; to see that all facilities are furnished by said government to enable him to secure the necessary testimony, and to pay, by draft payable as

hereinafter specified, one-half of the expense incurred by the said party of the first part in the preparation of evidence and the presentation of the same to the proper authorities of the Government of the United States; provided that such expense shall not exceed the sum of three thousand dollars ($3,000) American currency.

"And the said party of the second part further agrees, in consideration of the services above named, to pay to the said party of the first part, by drafts upon the national treasury of Mexico, payable in Mexican gold ten months after presentation at said treasury, a sum equal to ten *per centum* of any portion of said claim which may be waived or finally withdrawn by the proper authorities of the Government of the United States, or of its total amount if it be waived or withdrawn in the same manner; said drafts to be drawn by the Minister of Mexico at Washington immediately upon the final waiver or withdrawal of said claim or any portion thereof, as the case may be, by said authorities of the United States Government.

"In witness whereof we have hereunto set our respective hands and seals this twenty-ninth day of March, A. D., 1877.

"JAMES E. SLAUGHTER.*
"IGNACIO MARISCAL."

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* James E. Slaughter was examined in the Senate investigation on February 21, 1889. After stating that he had resided in Alabama since 1870, and that he was and had been since 1865 "a contractor in the improvement of rivers and harbors and railroads, etc.," and that he was "the General Slaughter who is so frequently mentioned in this case," he said that while in command of the Confederate forces on the Rio Grande he had an agreement with the Imperial and the Liberal forces for the surrender of criminals escaping from one side of the river to the other, and for the redress of outrages committed by people of one side on the citizens of the other side. His examination was then continued as follows (Rep. No. 2705, Sen., 50th Cong., 2d Sess., pp. 912, 913):

"It had been alleged that a large amount of cotton had been captured while I was in command there by the Mexican forces, and a claim had been put into the Mexican Commission by a man of the name of Weil, and the Mexican government asked me if I knew anything about it. I said that I did not; that

On the 6th of October, 1877, the Mexican government sent to the Department of State and circulated among members of Congress copies of two pamphlets (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., p. 135), to which Mr. Evarts referred, in a letter to Mr. Swann, the chairman of the House Committee on Foreign Affairs, dated November 6, 1877, as follows:

> "Since that time the Mexican government has simply presented in pamphlet form the motions made for a rehearing before the Umpire (Sir Edward Thornton) in the cases of Benjamin Weil and of La Abra Mining Company, adding thereto the correspondence between the Mexican Minister, Don Ignacio Mariscal, and my predecessor, Mr. Fish, in

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Mr. Weil was in my office every day. I could confer authority—one of our means of raising revenue was to tax every bale of cotton exported $5—and it required the signature of myself or my agents before any cotton could be exported. In that way——

"Mr. WILSON. Will you pause there a moment? As I have no relation to the Weil case, I do not want to bring out any testimony about it. * * *

"The WITNESS. I merely say that the institution of the Weil case brought me in contact with the Mexican government, and they asked me if I could get up the evidence with regard to the Weil case. I told them yes, and I did so, and then they asked me with reference to La Abra case.

"Q. Will you please state what time this was? * * * A. It was about the spring of 1876. * * * Late in 1876 they begged of me to see if I could not help them in the case of La Abra."

* * * * * * *

"By Mr. WILSON (*ib.*, 914): Q. Now, general, since this contract have you had charge of the prosecution of this matter before Congress and in the departments?—A. Yes, sir.

"Q. And still have charge of it, have you?—A. Yes, sir.

"Q. Now state whether you have employed persons to assist you in that matter?—A. Yes, sir; I employed Mr. Lines to assist me.

"Q. When?—A. I employed Mr. Lines soon after signing the contract. I forget what day.

"Q. Well, do you know whether the Mexican government pays anybody excepting yourself?—A. No one at all, I think.

"Q. Do you know a man by the name of Green?—A. Yes.

"Q. Did you employ him to assist you?—A. I sent Green to Mexico to get that press-letter copy book.

> reference to these two cases. These motions were denied by the Umpire, and these awards, standing upon the same footing of finality under the Convention with all the others, are awaiting distribution." (Mis. Doc. No. 13, H. R., 45th Cong., 1st Sess., p. 2.)

From June, 1877, to January, 1878, Mr. Ladislao Gaona, a law officer of the Mexican government, was employed at Mazatlan in collecting the so-called "newly-discovered evidence" which was subsequently examined by Mr. Evarts and is now comprised in Exhibit B, attached to Mr. Attorney-General's bill in this suit. (*Record*, 197–310.) Mr. Gaona prepared the interrogatories for the examination of Mr. Frederick Sundell (*ib.*, 296), and he took part in the proceedings against Loaiza and Gamboa, who had given testimony for the Company (*ib.*, 580, 594, 595), and whose later affidavits are contained in Exhibit B. (*Ib.*, 292–295.)

On the 3d of December, 1877, at Mazatlan, Mr. Gaona wrote to Mr. Vallarta, the Mexican Minister of Foreign Affairs, as follows:

> "I have definitely arranged our agreement with Granger, and in order that he may have a voucher or document I have submitted a statement in reference to the stipulated conditions to the district court, which will remain on file there, and a certified copy thereof will be issued to him. Granger is disposed to produce the witnesses at Noria, San Ignacio, and San Dimas, and to bind them to testify upon such terms as will be arranged by common agreement beforehand." (*Record*, 575.)

Mr. Gaona had been authorized by Mr. Vallarta, by letter dated November 14, 1877, to conclude the agreement with Granger (*ib.*)—

> "provided he agrees in receiving the $3,500 only in case that the government shall be definitely and

completely exonerated from the payment of the indemnification awarded by the Umpire of the Mixed Commission to the La Abra Mining Company."

Granger, a British subject, had been in the employ of the Company as bookkeeper, and had given testimony, in 1870, in support of the claim before the Commission (*Record*, 46–51; 64, 65), but he remained in Mexico and "formed relations" with the step-daughter of the local magistrate, Gaudalupe Soto, and had been examined four times in opposition to the claim by the Mexican authorities. These later depositions of his were also before the Commission. (*Record*, 111–113; 119, 120; 128–130.)*

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* Senators were informed during the debate on the bill, in connection with Exall's letter of February 26, 1868, to Granger, that Granger had not been examined as a witness in the original trial:

"Mr. GEORGE. Has Granger testified in relation to the alleged trespass on the mines?

Mr. DOLPH. No; I do not think Granger's testimony is in the case. Granger is dead. Granger's testimony is not in the case, but there is proof here to show that Granger was in possession—that he was there exercising ownership—at least four years afterwards, in 1872." (*Cong. Record*, January 22, 1892, p. 540.)

Six days later in the debate, the inquiry as to Granger was repeated:

"Mr. GEORGE. Has Granger been examined?

"Mr. MORGAN. Granger is dead. I am not so sure about his evidence having been obtained, but I will find out. The Senator from Oregon (Mr. Dolph) prepared the report in the case. My recollection now is that Granger was not sworn. I think I can tell in a moment. I do not think he was sworn. Granger remained out in Mexico with his Mexican wife that he married there. He never came back to the United States. My recollection now is that they never got hold of him to swear him. It is probably a pity they did not.

* * * * * * *

"Mr. GEORGE. He was not examined before the Joint Commission?

Mr. MORGAN. That is what I was trying to find out. I do not think he was. * * * He never returned to the United States; but I did not know but that his deposition or affidavit might have been taken in Mexico. However, I do not remem-

In December, 1877, and January, 1878, under this agreement, Granger delivered the books and papers of the company to Gaona (*Record*, 575–577), but all the books except the letter-press copy book were withheld by the Mexican government till 1894, when they were produced by the Mexican Consul-General Coney in his examination, on behalf of the Mexican government in this suit, comprising in all twenty-eight exhibits. (*Record*, 565–569.)

The Mexican government not only withheld these books and papers from inspection by the Government of the United States from 1878 to 1894, although they contain important evidence in favor of the Company's claim, but kept demanding their production by the Company as if it had concealed or destroyed them.* The last of

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ber that it was, and I do not believe that it was. I can find out from the record before I get through with my remarks."

The Senator explained his difficulty, and his views of the weight that should be given to the committee's recommendation, as follows:

"That case is so awfully voluminous, and there is so very much of it, that it is almost impossible to condense a statement of it in such a form as to satisfy the Senate as to what the real state of facts is through and through. If I were before a jury trying this cause upon the facts, in order to do justice to my clients I should have to spend fully a week in the investigation of the testimony. I can not do it here. I do not wish to do it. I do not think it is necessary; I do not think it is proper; I do not think it is required of the committee. I do not suppose you wanted us to come here prepared to satisfy every Senator who might ask a question about any feature of this case so as to convince him that we were right in our conclusions about it." (*Cong. Record*, January 28, 1892, p. 645.)

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*The following is from Colonel De Lagnel's examination in the Senate investigation, September 28, 1888, when the books in question had been for more than ten years in the possession of the Mexican government:

"Mr. WILSON. I assert this: that the books and papers of this Company went into possession of the Mexican government, just as they got these letters that we have seen here. They were left there at the hacienda as part of the record in this case and the Mexican government got possession of them.

these demands was made in this suit. (*Record*, 461, 462.)

While the bill (which afterwards, when amended, became the Act of June 18, 1878) for the distribution of the awards, was under consideration, a pamphlet entitled "The Weil and La Abra Frauds—Petition of James E. Slaughter," and purporting to tell "The Story of the

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Mr. LINES. That is denied. (Rep. No. 2705, Sen., 50th Cong., 2d Sess., p. 47.)

"By Mr. FOSTER. * * * State what record, if any, was contained in any of the books of the Company in your charge of any loss of mules or supplies by seizure by the Mexican authorities previous to your arrival.

"Mr. WILSON. That calls for the contents of books?

"Mr. FOSTER. Yes; books which we can not get and do not know anything about."

Three years later, when the bill was under debate in the Senate, the Company was again charged with failure to produce its books and papers, and it was taken for granted that these records had been kept in New York as well as at Tayoltita, where the Company's works and mines were situated and its mining business had been carried on. It will be observed, in what follows, that Senator Morgan expressed his belief that the Company had acted with bad faith in this matter:

"Mr. GEORGE. Did the committee use all the means in their power to get possession of the books and papers?

Mr. DOLPH. We did. We subpœmaed everybody who we supposed knew anything about them. They were demanded of the attorneys of the Company, and every other step was taken that is known to the practice in such cases.

Mr. MORGAN. There was a *subpœna duces tecum* issued to every person we could hear of who had had possession of or any connection with the books at all—stockholders, treasurer, and secretary. The secretary of the Company was dead, and Garth was treasurer and a large stockholder. Garth kept his books and the book of correspondence in the secretary's office, and when he would write a letter in his own office he would take it to the secretary's office in New York and there have it copied into the letter-press book.

Garth, who had understood that the secretary had put the books in some loft or garret somewhere, had made one or two searches for them. The attorney of the Company, who had been all the time prosecuting this claim, when on the stand had an entire absence of any knowledge or recollection about the treasurer's books or any account books of the Company. They had all vanished. The committee, however, used very diligent efforts to get those records brought before it, and failed entirely, which I thought, and believe, resulted from an effort on the part of the Company to conceal the evidence." (*Cong. Record*, January 21, 1892, p. 461.)

Mine," was circulated among members of Congress, although it had never been introduced in either House.* (*Record*, 656, 754–802.) A bill for making distribution on all the awards had passed the House on the 9th of February, 1877, but its passage had been prevented in the Senate by a statement from Senator Spencer, of Alabama, that he "had received a dispatch from a constituent of his, a citizen of Mobile, to the effect that the constituent had positive proof of fraud in connection with the Mexican Commission." (Rep. 27, Part 2, H. R., 45th Cong., 2d Sess., p. 3, citing p. 1548 *Congressional Record*, 44th Cong., 2d Sess.) On the 7th of November, 1877 (after the contract between the Mexican government and "General James E. Slaughter of Mobile, Alabama," had been signed), Mr. Forney, of Alabama, introduced a joint resolution in the House of Representatives directing the Treasurer of the United States "to pay no moneys on account of said two claims until further information is obtained by Congress." (*Record*, 760.)

In Mr. Evarts' letter to Mr. Swann (*supra*) he had said that it would have been "according to the practice of the Government" for him to distribute the money received from the Mexican government, but that he had hesitated to make the distribution—

> "because of some legislation being necessary to make good to the fund the amount with which the

*On the 25th of July, 1878, Mr. Zamacona inclosed with a note to Mr. Evarts "a printed extract containing a portion of the evidence" which—Mr. Zamacona said—"shows the fraudulent character of the claims in question," (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., p. 161.) The matter so inclosed, referring to La Abra Company, was headed "Appendix B—The Story of the Mine" (*ib.*, pp. 169–188), and is identical with the matter contained in the so-called Slaughter petition, under the same heading. (*Record*, 761–802.)

Government of the United States is chargeable,* and because it is desirable that the form and manner of the reservation from the installment in hand of the expenses of the Government should now be settled." †

The act for the distribution of the awards was finally passed on the 18th of June, 1878, and contained the following provision (20 Stats., 145):

"SEC. 5. And whereas the government of Mexico has called the attention of the Government of the United States to the claims hereinafter named, with a view to a rehearing; therefore be it enacted, That the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards,

* This amount was the sum total of the awards to citizens of Mexico against the United States, which the Mexican government had been allowed by the Convention to deduct from the sum total of the awards to citizens of the United States against Mexico, and which Congress, by the Act of June 18, 1878, restored to the Secretary of State, so as to put the whole amount awarded to citizens of the United States in his hands for distribution.

† The Convention provided (Art. VI) that the whole expenses of the Commission should be defrayed by a ratable deduction on the amount of the sums awarded by the Commission, not exceeding five per cent., and that if such percentage was insufficient the deficiency should be defrayed in moieties by the two governments.

respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them."

By direction of President Hayes, Mr. Evarts made an examination of the evidence submitted by the Mexican government in support of its charges—including the letter-press copy book—and after hearing elaborate arguments by counsel on both sides, he reported on the 8th of August, 1879—

> "That neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico."

He added, however, that he was of opinion—

> "that the matters brought to the attention of this Government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud."

And he concluded this report as follows:

> "It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of a fraudulent exaggeration of the claim in its measure

of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand. I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point." (Ex. Doc. No. 150, Sen., 46th Cong., 2d Sess., pp. 2, 3.)

The President having approved this report on August 13th, 1879, it was communicated to the respective parties, and, on the 1st of September, counsel for the Mexican Government filed a motion in the Department of State for a rehearing, and entered their—

"protest against the distribution of any portion of the installments already paid to the credit of La Abra claim, upon the assumption that the charges of fraud preferred by Mexico in that case go only to the measure of damages insisted upon and allowed, and not to the integrity of the claim itself." (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., pp. 573–581.)

This motion contained an elaborate argument showing that Mexico charged, and attempting to show that the fact was, that the whole of the award had been obtained by fraud.

On the 3d of September, 1879, Mr. Evarts reported his conclusions to the President—by whom they were approved on the 5th of that month—the first of which reads as follows (*ib.*, 583):

"Upon a renewed examination of the matter, as laid before me by the Mexican government, I am confirmed in the opinion that the proper limits of the further consideration, which the honor of the Government should prompt it to give to this award, should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission to which, under the provisions of the Convention, it was presented by this Government." (Ex. Doc. No. 150, Sen., 46th Cong., 2d Sess., p. 3.)

Mr. Evarts also reported that, in his opinion, it would be proper to pay to the Company its distributive share of the installments that had been received from the Mexican government.

On the 9th of September, 1879, counsel for Mexico filed a motion with Mr. Evarts for a reconsideration of this decision, in which the case was again reargued.

On the 17th of September, 1879, the Department of State paid to S. S. Ely, treasurer of the Company, its share of the three annual installments which had been received from the Mexican government. (Ex. M, "Confidential," 47th Cong., 1st Sess., p. 6.)

On the 15th of April, 1880, President Hayes communicated these reports, with a supplemental report from Mr. Evarts, dated the 13th of that month, to the Senate, and they were referred to the Committee on Foreign Relations and ordered to be printed. They comprise the Executive document (Sen. No. 150) heretofore cited.

In his final report—referring evidently to his earlier suggestion that the Executive was not furnished with the means of coercing the attendance of witnesses and examining them on oath—Mr. Evarts expressed the opinion that Congress should decide whether to make the necessary provision for such a further investigation, and he concluded as follows:

> "Unless Congress should now make this disposition of the matter and furnish thereby definite instructions to the Department to reserve further payments upon the awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the Convention."

This, as already stated, was communicated by the President to the Senate on the 15th of April, 1880.

On the 27th of April, 1880, Senator Morgan, by request, brought in a bill (S. 1682) "directing the Court of Claims to investigate the claims of Benjamin Weil and La Abra Silver Mining Company," which was read twice and referred to the Committee on the Judiciary.

After providing that the Secretary of State should certify to the court the evidence that was before the Commission and that further testimony might be taken on either side, the bill provided:

> "SEC. 5. That upon the completion of said proofs, and within a year from the passage of this act, the said court shall render its opinion, upon the record and the new evidence, whether said claimants should have recovered any, and, if any, what, damages for the acts of the government of Mexico, its officers or agents, as alleged in their respective claims. Said opinion shall be transmitted to the President, who is hereby requested to notify the government of Mexico thereof when the same shall have been rendered, and that the United States release the said government from the payment of said claims, or insist upon the payment of the whole or a portion of both, or either of them, in accordance with said opinion."

On the 10th of June, 1880, the Senate Committee on the Judiciary reported against the bill, and recommended its indefinite postponement, on the following grounds:

> "The bill under consideration proposes to withdraw these two claims from the dominion of international jurisdiction and place them before a tribunal organized and existing solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaint that are known to exist on behalf of citizens of the United States whose claims, for various causes, failed to receive favorable consideration by said Commission under the treaty creating the Com-

mission." (Rep. No. 712, Sen., 46th Cong., 2d Sess., p. 6.)

The President's message of April 15, 1880, containing Mr. Evarts' final report, is reprinted, in its entirety, in the Judiciary Committee's report, referring to which the committee say (*ib.*, p. 5):

> "It will be seen from this report, with respect to La Abra mining claim, the principal ground of complaint is exaggeration of damages, and upon that question it does not appear that any fault whatever attaches to the Commission before whom it was examined, nor to the Referee by whom it was affirmed. It also appears that the Department of State so far passed upon the question of excessive damages as to determine the claimants to be entitled to the installments already paid in, and that the Executive had directed the amounts to which the claimants were thus entitled to be paid over; and while the remaining installments not yet received may be regarded as subject to retention to meet the question of a reduction of damages, it virtually determines the question submitted to the Executive Department by the said fifth section, so far as that claim is involved."

On the 10th of June, 1880, the Senate adopted the Judiciary Committee's report, and indefinitely postponed the bill. (*Congressional Record*, 46th Cong., 2d Sess., Vol. 10, pt. 5, p. 4347.)

On the 12th of June, 1880, the Committee on Foreign Affairs of the House of Representatives, having reported a similar bill favorably, asked leave to withdraw the report and the bill from the further consideration of the House, and by unanimous consent the bill and report were so withdrawn. (*Ib.*, p. 4486.)

On the 13th of July, 1880, Mr. Navarro notified Mr. Evarts that Mexico's counsel were preparing to bring suit in the District of Columbia "against the promoters

of the fraudulent claim of Benjamin Weil and that of La Abra Company." These proposed proceedings, to be brought "in the name of Mexico," were explained and justified by Mr. Navarro at great length in his letter of August 12, 1880, in answer to Mr. Evart's note of the 4th of that month. (Ex. Doc. No. 103, H. R., 48th Cong. 1st Sess., pp. 611–621.) But no such proceedings were ever taken.

On the 14th of August, 1880, the fourth installment of the award was ordered to be paid to the Company and its assigns by President Hayes. (Ex. Doc. No. 109, Sen., 50th Cong., 1st Sess., p. 9.)

On the 6th of November, 1880, Mr. Navarro withdrew from the Department of State all the documents comprised in the so-called newly-discovered evidence, and gave a receipt, with a list of the papers in detail. (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., pp. 623, 624.)

On the 5th of February, 1881, Mr. Evarts notified Mr. Navarro (in answer to a request for further suspension of payment)—

> "That the decision of the President in the Weil and La Abra cases, as heretofore communicated to your Legation, must be regarded as the final determination of the Executive Government that the awards under the Commission organized pursuant to the terms of the Convention of July 4, 1868, can not be reconsidered, diplomatically, between the two governments; and that, consequently, the administration of the payments to the parties interested in the awards belongs exclusively to the Government of the United States in its obligations to its own citizens. This administration is regarded by the President as requiring the distribution of the awards in these cases upon the same regulations as in all other cases, in the absence of any direction by Congress to the contrary."

On the 5th of March, 1881, the Department of State

paid to S. S. Ely, treasurer of the Company, its share of the fifth installment, since which time no further payment has been made to the Company or its assigns on account of the award.

On the 20th of July, 1882, President Arthur transmitted a Convention which had been negotiated by Mr. Frelinghuysen for the United States, and Mr. Romero for Mexico, "providing for the reopening and retrying of the claims of Benjamin Weil and La Abra Silver Mining Company against Mexico, signed on the 13th day of July, 1882." (Ex. M. Confidential, 47th Cong., 1st Sess., pp. 1–5.)

The action taken on the Convention in the Senate during the 47th and 48th Congress is stated as follows (*ib.*, p. 1):

"*July 26, 1882.* Read. Convention read the first time, referred to the Committee on Foreign Relations, and, together with the message and accompanying documents, ordered to be printed in confidence for the use of the Senate.

August 7, 1882. Reported without amendment, and with the recommendation that the Senate advise and consent to the ratification of the same.

January 15, 1883. Rejected. Motion made to reconsider, and motion made to lay the motion to reconsider on the table.

February 27, 1883. Motion to lay the motion to reconsider on the table withdrawn, and the further consideration of the Convention postponed to the first Monday in December next.

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December 11, 1883. Referred to the Committee on Foreign Relations.

May 21, 1884. Reported by Mr. Miller, of California, with amendments, viz, omit the parts in brackets and insert the parts printed in *italics*."

While this convention was pending in the Senate La Abra Company and an assignee of part of the Weil award (*Key*) brought suits in the Supreme Court of the District of Columbia to obtain writs of mandamus requiring the Secretary of State to pay to the several relators their respective shares of the installment received from Mexico in 1882. The Secretary answered in the

Key case and demurred to La Abra Company's petition. Key demurred to the Secretary's answer, and the court sustained the demurrer, and awarded a peremptory writ as prayed for. The Secretary of State appealed to this court, and so did La Abra Company from the decision sustaining the Secretary's demurrer. The two cases—*Frelinghuysen* v. *Key* and *La Abra Company* v. *Frelinghuysen*—were considered and decided together in this court, January 7, 1884. (110 U. S., 63–76.)

The opinion in these cases, which was delivered by Mr. Chief Justice Waite, closed as follows:

> "Of course, in what we have said, we express no opinion on the merits of the controversy between Mexico and the relators. Of that we know nothing. All we decide is, that it was within the discretion of the President to negotiate again with Mexico in respect to the claims, and that as long as the two governments are treating on the questions involved, he may properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State."

On the 21st of April, 1886, this Convention was rejected, after having been before the Senate nearly four years. (Ex. Doc. No. 109, Sen., 50th Cong., 1st Sess., p. 5.)

On the 5th of August, 1886, the House Committee on Foreign Affairs reported, by Mr. Daniel, against a bill (H. R. 8122) "to amend and enlarge the fifth section of an act approved June 18, 1878." This report defended the award on the merits. The committee consisted of thirteen members, ten of whom concurred in the report after hearing counsel for Mexico and the Company, and examining the letter-press copy book in full committee. There was a minority report signed by three members of the committee. (Rep. No. 3474, H. R., 49th Cong., 1st Sess., and part II.)

On the 1st of March, 1889, the Senate Committee on

Foreign Relations reported, by Mr. Dolph, in favor of a bill (S. 2632) to amend and enlarge the act approved June 18, 1878, etc. To this report is appended the testimony taken by a subcommittee under a resolution of the Senate. The chairman (Senator Sherman) dissented (*Record*, 452, 453), and there was a minority report signed by Senator Brown. (Rep. No. 2705, 50th Cong., 2d Sess., and Views of the Minority, part II,)

On December 18, 1889, Mr. Morgan introduced a bill (S. 374), and on December 10, 1891, Mr. Dolph introduced a bill (S. 539), both similar to the bill recommended in the last-named report, which, on account of the mass of testimony appended to it, was not reprinted. The bill (S. 539), after sundry amendments, was passed by the Senate on the 1st of February, 1892, and a motion which was made by Senator Daniel to reconsider the vote by which it was passed was defeated.

The chairman of the Judiciary Committee (Senator Hoar) had moved to amend the bill by striking out section 3, giving an appeal to this court, on the ground that—

> "the Supreme Court of the United States is only authorized to sit for the decision of cases in law or equity or admiralty arising under the laws and treaties of the United States or under the Constitution thereof, such as are defined in the jurisdictional clause; and it is well settled that the decision of a case within the constitutional sense is the final determination of some question of legal right, using the word 'legal' as including equitable in the technical sense arising between the parties described; and we can not impose upon that tribunal the duty of instructing the conscience or the understanding of any political department of the Government." (*Cong. Record*, January 21, 1892, p. 456.)

There was a long debate on this amendment, but Senator Morgan, who had charge of the bill, said he felt

"impelled to ask the Senate to hold on to this right of appeal," for he did not wish this case to "go out of the Congress of the United States with the slightest impeachment upon it."

> "I wish (he said) that none of these men may be able to say hereafter that we have violated any principle or usage of law in the disposal of this matter, but that it may be said that the Government of the United States has offered to these men, whom it has lately found itself compelled to bring into court, a full, fair, and impartial trial before a proper judicial tribunal of the country, and has given to the parties litigant all the full rights of appeal that would belong to a litigation between private individuals. So I prefer to hold on to that section of the bill." (*Cong. Record*, January 28, 1892, p. 646.)

On the day the bill passed the Senate, Mr. George, in the absence of Mr. Hoar, made an argument in support of the amendment, in which, on closing, he said that he was—

> "so confident that the third section was unconstitutional, that if it remained in the bill, although he desired, with all his heart, to render justice to Mexico, he would be compelled to vote against the proposed enactment." (*Cong. Record*, February 2, 1892, p. 786.)

Senator George's argument is singularly clear and forcible, and all the more impressive, because, on faith of the statements made in the majority report and on the floor of the Senate by the advocates of the bill, he believed that the award in its entirety had been obtained by fraud.

On the 20th of April, 1892, Mr. Geary, from the House Committee on Foreign Affairs, reported the last-named bill (Sen. 539) favorably. (Rep. No. 1143, H. R., 52d Cong., 1st Sess.)

This report, as originally prepared in the subcommittee, was strongly against the award, but the following clause, which strongly qualifies the rest of the report, if not entirely incompatible with it, was inserted before the report received the sanction of the committee:

> "This committee does not intend to impugn the integrity of the persons connected with the Company, nor constitute an opinion on the merits of the case. The stockholders doubtless invested their money in good faith, and it is fair to assume that the first superintendent, Bartholow, an important witness before the Commission, believed that the mines were valuable, and when he left them had high hopes of their future; but an examination of the testimony taken by the Senate committee throws doubt on that of Exall and all the witnesses who testified before the Commission as to any acts of hostility of the Mexican authorities tending to establish the charge that the Company was thereby forced to abandon its property. These points ought to be considered in the light of the new testimony."

On the 13th of December, 1892, this bill (S. 539) was passed by the House of Representatives and approved by the President on the 28th of that month. (27 Stats., 409.)

On the 30th of March, 1893, Mr. Attorney-General brought suit—under the provisions of the act—in the Court of Claims.

The act is printed in the opinion of the court overruling the demurrer. (*Record*, 328–330.)

On the 16th of September, 1893, the Company filed its demurrer. (*Record*, 311–315.)

On April 16, 1894, the demurrer was overruled by the Court of Claims, Mr. Justice Weldon delivering the opinion. (29 Ct. Clms., 432–522; *Record*, 318–356.)

The opinion of the court on the ninth ground of the

demurrer* was rendered by Mr. Justice Nott in the case of *The United States* v. *Alice Weil et al.* (29 Ct. Clms., 523–549; *Record*, 357–380.) Mr. Chief Justice Richardson concurred in holding that the act in question was valid—

> "because it was duly approved by the President during a recess of the same Congress in which it was passed by the House of Representatives and the Senate;" but he declined "to express an opinion upon the question not involved in the case—whether or not the President has a right to approve a bill after the Congress in which it was passed has expired."

He also said:

> "I am impressed with the view which has prevailed, and which, with the single exception of the Captured and Abandoned Property Act of March 12, 1863, has been adopted and followed in practice ever since the foundation of the Government, that the President for the time being is part of the legislative power of each separate Congress, like the Senate, which is a continuing body and that when a Congress expires by limitation his authority to approve bills of that Congress is gone." (29 Ct. Clms., 548, 549; *Record*, 380, 381.)

On November 30, 1896, after the Company had filed its answer (*Record*, 424–459) and new testimony had been taken on both sides (*ib.*, 461–802) and the case had been heard on the merits, the following order was made by the court (*Record*, 803):

> "In consequence of the death of the Chief Justice

* "That said act of Congress is inoperative and void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval which it ever received being on the 28th of December, A. D. 1892, when Congress was not in session, both Houses of Congress having adjourned on the 22d day of December, A. D. 1892, to the 4th of January, A. D. 1893." (*Record*, 314, 315.)

> (Richardson), the inability of one of the judges to sit in the case (Mr. Justice Davis), and the difference in the minds of the judges who sat in the former hearing, this case is remanded to the trial calendar to be heard before four judges when the condition of the bench will permit."

On January 29, 1897, a bill passed the Senate "to insure a full bench in the Court of Claims for the hearing of the cases entitled The United States *against* La Abra Silver Mining Company and others" (S. 3588), and its passage was subsequently recommended by the Judiciary Committee of the House, but it was not reached, and the case was again argued before four judges.

On the 24th of June, 1897, the opinion of a majority of the court was delivered by Mr. Justice Weldon, to the effect that the whole of the award was obtained by fraud (32 Ct. Clms., 462–521; *Record*, 842), Mr. Chief Justice Nott dissenting (32 Ct. Clms., 521–533; *Record*, 843–851), and the following decree was entered:

> "The court finding from the evidence that the award made by the United States and Mexican Mixed Commission in respect to the claim of the said company was obtained, as to the whole sum included therein, by fraud effectuated by means of false swearing and other false and fraudulent practices on the part of said company and its agents; it is therefore hereby ordered, adjudged and decreed that all claims in law and equity on the part of the said company, its legal representatives and assigns, be forever barred and foreclosed of all claim to the money received from the Republic of Mexico for or on account of such award." (*Record*, 852.)

On the 24th of January, 1898, this court (denying a motion made by the appellant—that the constitutional objections to the jurisdictional act should be first heard and determined)—said, per Mr. Chief Justice Fuller:

> "When the case is called, counsel will be expected to discuss in the first instance these questions:

"Whether the Court of Claims has jurisdiction of this case?

"Whether this court has jurisdiction of this appeal?

"Whether the appellate jurisdiction, if any, of this court extends to a review of the facts?"

I.

The Court of Claims has no jurisdiction over this matter, because it is not a "case" within the meaning of the Constitution, nor is it a "controversy" in which the United States is a party.

The act approved December 28, 1892, plainly attempts to confer strictly judicial power on the Court of Claims and this court. The first section of the act authorizes and directs the Attorney General of the United States to bring *suit* or *suits* in the name of the United States "to *determine* whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud, effectuated," etc., and, "in case it be so *determined*, to *bar* and *foreclose* all claim in *law* or *equity* on the part of the said La Abra Silver Mining Company, its legal representatives or assigns, to the money," etc. The second section provides that "*full jurisdiction* is hereby conferred on the Court of Claims to hear and *determine* such suit and to make *all* interlocutory and *final decrees* therein * * * and to *enforce* the same by *injunction* or any proper *final process*." The third section gives an appeal to this court "from any *final decision*" of the Court of Claims. The fourth section provides that "in case it shall be *finally adjudged* in said cause" that the award was obtained by fraud as aforesaid, and that

the said Company, its legal representatives or assigns, "be *barred and foreclosed* of *all* claim to the money * * * the President of the United States is *hereby* authorized to return to said government any money * * * which such court shall *decide* that such persons are not entitled, in justice and equity, to receive out of said fund." The fifth section provides for payment "to the persons entitled thereto," "in case it shall be *finally adjudged* in said cause, either in the Court of Claims or in the Supreme Court of the United States, that the *award*, * * * or any definable and severable part thereof, was not obtained through fraud as aforesaid." (*Record*, 328–330.)

The court below held that it is "the expressed purpose of the act to confer jurisdiction on the court," and that it "provides a very complete, plain, and ample jurisdiction, to deal with the subject-matter of the controversy, in the broadest scope and exercise of judicial authority." (*Record*, 339.)

But the Government is not at liberty to make up a case for the courts thus to adjudicate. It has no real interest in the fund in controversy—does not claim it as proprietor. Indeed, the jurisdictional act provides that the fund in controversy shall go either to the appellant or to Mexico, and does not admit of a decree for or against the United States." (*Curtner* v. *United States*, 149 U. S., 662.) To become "a case," the subject must be submitted to the court by a party who "*asserts his rights*." (*Osborn* v. *U. S. Bank*, 9 Wheat., 738, 819.) There must be parties to come into court who can be reached by its process and bound by its power. (Curtis' Comm., sec. 85 *et seq.*)

Article III, section 2, clause 1 of the Constitution declares that—

> "The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

In a memorable debate in the House of Representatives, in February and March, 1800 (Annals of Congress, 6th Congress, 511–621), upon the question whether the surrender of fugitive criminals to foreign powers is an executive or judicial function, John Marshall, afterwards Chief Justice, construed this clause of the Constitution, in a speech which is preserved in an appendix to one of the volumes of this court's opinions.

Mr. Wheaton's report of that speech contains the following:

> "The gentleman from New York had relied on the second section of the third article of the Constitution, which enumerates the cases to which the judicial power of the United States extends, as expressly including that now under consideration. Before he (Mr. Marshall) examined that section, it would not be improper to notice a very material misstatement of it made in the resolutions offered by the gentleman from New York. By the Constitution, the judicial power of the United States is extended to all cases in law and equity arising under the Constitution, laws, and treaties of the United States; but the resolutions declare the judicial power to extend to all questions arising under the Constitution, treaties, and laws of the United States. The difference between the Constitution and the resolutions was material and apparent. A case in law or equity was a term well understood and of limited signification. It was a controversy between parties which had taken a shape for judicial decision. If the judicial power extended to every question under the Constitution, it would involve almost every subject proper for legislative discussion and decision; if to every question under the laws and treaties of the United States, it would involve almost every subject on which the executive could act. The division of power which the gentleman had stated could exist no longer, and the other departments would be swallowed up by the judiciary. * * *
>
> "By extending the judicial power to all cases in

> law and equity, the Constitution had never been understood to confer on that department any political power whatever. To come within this description, a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court who can be reached by its process and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit." (5 Wheaton, Appendix, pp. 16 and 17.)

In *Cohens* v. *Virginia*, 6 Wheaton, 264, 305, counsel had maintained that the judicial power of the Federal courts did not extend to all cases of a judicial character arising under the Constitution and laws of the United States and treaties made, etc., adding:

> "It will be remembered by the court that the words are, not all questions, but all cases. Although, therefore, a question may arise, yet before there can be a case, there must be parties over whom the court can take jurisdiction; and if there be no such parties, the court can not act upon the subject, though the question may arise, though it may be clearly of a judicial nature, and though there may be the clearest violation of the Constitution."

In commenting upon this, Chief Justice Marshall said (page 405):

> "The article does not extend the judicial power to every violation of the Constitution which may possibly take place, but to 'a case in law or equity,' in which *a right*, under such law, is asserted in a court of justice. If the question can not be brought into a court, then there is no case in law or equity, and no jurisdiction is given by the words of the article. But if, in any controversy depending in a court, the cause should depend on the validity of such a law, that would be a case arising under the Constitution, to which the judicial power of the United States would extend."

In the same opinion the Chief Justice defines a suit. He says (page 408):

> "What is a suit? We understand it to be the prosecution, or pursuit, of some claim, demand, or request. In law language, it is the prosecution of some demand in a court of justice. The remedy for every species of wrong is, says Judge Blackstone, 'the being put in possession of that right whereof the party injured is deprived.' 'The instruments whereby this remedy is obtained, are a diversity of suits and actions which are defined by the Mirror to be "the lawful demand of one's rights;" or, as Bracton and Fleta express it, in the words of Justinian, "*Jus prosequendi in judicio quod alicui debetur.*"' Blackstone then proceeds to describe every species of remedy by suit; and they are all cases where the party suing claims to obtain something to which he has a *right.*"

In *Osborn* v. *The Bank*, 9 Wheaton, 739, 819, the same Chief Justice said:

> "This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when a subject is submitted to it by a party who asserts his *rights* in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States."

See, also, Paschal, Anno. Const., 194 *et seq.*, and cases cited; Story on the Const., sec. 1648.

Justice Miller, in his lectures on the Constitution (p. 315), after stating that the definitions of the term "case" are numerous, declares none is better than the one given by Chief Justice Marshall in the case of *Osborn* v. *The Bank, supra.*

In *Georgia* v. *Stanton*, 6 Wall., 50, 76, it was said:

> "In order to entitle the party to the remedy, *a case* must be presented *appropriate for the exercise of judicial power;* the rights in danger, as we have seen, must be rights of persons or property; not merely political rights, which do not belong to the jurisdiction of a court, either in law or equity."

In this opinion, the following language of Mr. Justice Thompson, in *Cherokee Nation* v. *Georgia*, 5 Pet., 1, was cited with approval:

> "I do not claim for this court the exercise of jurisdiction upon any matter properly falling under the denomination of political power. * * * Much of the matters therein [in the bill] contained by way of complaint would seem to depend for relief upon the exercise of political power, and, as such, appropriately devolving upon the Executive, and not the Judicial Department of the Government. This court can grant relief *so far only as the rights of persons or property are drawn in question and have been infringed.* * * * It is only where *the rights of persons or property are involved*, and when such rights can be presented under some judicial form of proceedings, *that courts of justice can interpose relief.*" (See these extracts in Miller on the Constitution, 314, 315, *note.*)

> "Not all cases and controversies which may have their basis in the Constitution, or a law or a treaty of the United States are necessarily judicial in their character. There are many questions of a legal nature in the settlement of which facts are to be ascertained, and in respect to which judgment is to be exercised upon the provisions of law applicable to them, but which do not come within the scope of the judicial power provided for in the third article of the Constitution. They do not belong to the 'cases' and 'controversies' specified in this article. They are rather political than judicial in their nature, and hence it is not the province of courts, as such, to de-

termine them. Some of them are to be determined by the Executive Department and some of them by Congress. The judicial power to be exercised by the Federal courts, as courts, is limited to such 'cases' and 'controversies' as *admit of final settlement* by these courts, when brought before them in accordance with the provisions of law." (Spear on *The Law of the Federal Judiciary*, pp. 6, 7).

The method of executing the award, which is a part of the treaty, must be determined, not by the courts, but by the President.

On a subject of this nature Representative Marshall, in the speech already cited, said:

> "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.
>
> He possesses the whole executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.
>
> He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.
>
> The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed—the force of the nation—are in the hands of this person."
>
> * * * * * * *
>
> "The Executive is not only the constitutional department but seems to be the proper department to which the power in question may most wisely and most safely be confided.
>
> The department which is intrusted with the whole

foreign intercourse of the nation, with the negotiation of all its treaties, with the power of demanding a reciprocal performance of the article, which is accountable to the nation for the violations of its engagements with foreign nations and for the consequences resulting from such violation, seems the proper department to be entrusted with the execution of a national contract like that under consideration.

If at any time policy may temper the strict execution of the contract, where may that political discretion be placed so safely as in the department whose duty it is to understand precisely the state of the political intercourse and connection between the United States and foreign nations, to understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union?

This department, too, independent of judicial aid, which may, perhaps, in some instances be called in, is furnished with a great law-officer, whose duty it is to understand and advise when the *casus foederis* occurs." (5 Wheat., Appendix, 26–28.)

Elsewhere in this brief authorities are given in support of the proposition that the questions involved in this proceeding are of a political character and are to be determined exclusively by the Executive.

The Court of Claims could have been authorized to investigate this matter and *advise* the President. In that case this court could not have entertained an appeal from its decision. (*Re Sanborn*, 148 U. S., 222.) But the Court of Claims has "ordered, adjudged, and decreed that all claims in law and equity on the part of said Company, its legal representatives and assigns, be forever barred and foreclosed of *all claim to the money received from the Republic of Mexico for or on account of such award.*" And, in case of such foreclosure, the act provides that "the President of the United States is *hereby* authorized to

return to said government any money paid by the government of Mexico on account of said award remaining in the custody of the United States."

Other objections to this extraordinary and anomalous decree are stated elsewhere in this brief, and it is therefore sufficient to say in this connection, that if it were to stand, and could be enforced, it would not only reverse and set aside the President's conclusion that La Abra Company had a valid complaint against Mexico, and that the honor of the Government required that any further investigation as to the award on the Company's claim should be confined to the alleged fraudulent exaggeration of the damages (*supra*, p. 19), but it would also make the United States internationally liable for the payments heretofore made by the President to the Company and its assigns, and cloud their title to the sums so paid to them; for the decree does not refer to the amount remaining undistributed, but "*to the money received from the Republic of Mexico for or on account of the award.*"

The absurdity of the position in which the United States would be placed by the contradictory decisions of different departments of the Government in the same matter, is made apparent in the following passages from the dissenting opinion of Mr. Chief Justice Nott (***Record***, p. 845):

> "The action of the President and the act of Congress must be construed with reference to each other, and the later, especially, with reference to the earlier. For the President to believe that the Mexican Government might be wholly exonerated, and the award be wholly and absolutely invalidated for fraud, and the claimants ultimately be held to be entitled to nothing, and the Mexican Government be adjudged entitled to have the whole of the award returned to it, and then for the President, so

believing, immediately to pay away one-third of it to these same claimants, would be foolishness. Such inconsistency can not be attributed either to the President or the Secretary of State.

"Neither can it be supposed that in a transaction, international in its character, Congress intended that the Judiciary should review the decision and action of the Diplomatic branch of the Government, and undo what it had done, and subject the President and Secretary of State in their dealing with a foreign power to the implied censure of American courts."

"Nor can it be supposed that Congress intended to create by implication a possible equitable liability on the part of the United States to Mexico.

"For if the judiciary should decide that the Mexican authorities were not guilty of the acts complained of, and that the company did not abandon the property because of those acts, and should declare the award to be void wholly and absolutely, then it must follow that when the President and Secretary of State, with the same evidence of fraud before them, paid away $240,683 to the claimants, it was a wrong done to Mexico; and the United States will then be in the dilemma of either leaving this wrong to Mexico unredressed or of making good the loss from their own Treasury. The statute does not provide for such a liability, nor contemplate it, and *nations in international controversies do not submit their own diplomatic acts to such censure.*

"It is indeed inconceivable that the United States, through their legislative branch of the Government, should have intended that the United States should come into their own courts as a litigant, there to allege and maintain that the United States, as an international power, had committed a wrong against another government."

The courts can not, as courts, give *advice* to the President concerning the proper performance of the convention of 1868 with Mexico. The judges of this court, when asked by President Washington to advise him

concerning the proper exposition of the treaties with France, answered that they considered themselves inhibited from counselling or deciding, in their official character, on *political questions, or in any question not brought before them in the recognized forms and regular progress of legal controversy.* (5 Marshall's Life of Washington, 441–443.)

In *United States* v. *Rauscher,* 119 U. S., 407, Mr. Justice Gray refused to express an opinion upon a certain point, "because not satisfied that that is a question of law within the cognizance of the judicial tribunals, as contradistinguished from a question of international comity and usage within the domain of statesmanship and diplomacy."

Congress can not "bring under the judicial power a matter which, from its nature, is not a subject for judicial determination."

Den v. *Hoboken Land & Imp. Co.,* 18 How., 272, 284.

Only judicial power can be conferred upon this court.

> "The kind of authority that is judicial in its nature relates to and acts upon rights of person or property not created by this authority, but existing under law. This authority, in specific controversies between parties, determines these rights as they thus exist, and does so at the instance of a party thereto. These qualities distinguish judicial power from what is simply executive or legislative." (Spear, *Law Fed. Jud.,* 3.)

Senator George, commenting upon this citation, said:

> "In this case (La Abra) we discard the rules of law. We leave to the court the power of its own mind, according to its own conscience, to say for the political department of the Government what is for the honor of the United States; what justice and equity require us to do. These, sir, are all political questions; they are all to be resolved by the political

> department of the Government. The Government can not call in the Supreme Court, which can only have judicial power, and invest that court with authority to say what this Government ought to do with reference to a foreign nation according to the principles of honor and justice and equity." (*Congressional Record*, Feb. 2, 1892, pp. 785, 786.)

Congress can not "authorize or require this court to express an opinion on a case where its judicial power could not be exercised, and where its judgment would not be final and conclusive upon the rights of the parties, and process of execution awarded to carry it into effect."

Gordon v. *United States*, 117 U. S., Appx., p. 697.

Congress can not "break down the barriers between judicial and administrative duties, or make courts the mere agents to assist an administrative body in the prosecution of its enquiries."

Interstate Commerce Comm. v. *Brimson*, 155 U. S., 1.

Though this occurs in the dissenting opinion, it was not on this principle that the court divided. They agreed on the principle, but differed on the question whether it had been infringed.

This is not a controversy to which the United States is a party. A controversy is but a case. "Cases" include all suits, criminal and civil; "Controversies" only those of a civil nature.

1 Tucker's Blackstone, App., 420, 421;

Mr. Justice Iredell, in *Chisholm* v. *Georgia*, 2 Dall., 419, 431, 432;

2 Story's Const., § 1674, *note* (Cooley's ed.).

> "By those terms ["Cases" and "Controversies"] are intended the claims or *contentions* of *litigants* brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or

punishment of wrongs." (*Smith* v. *Adams*, 130 U. S., 167.)

Here the United States can not be considered in the light of a "litigant" contending before the courts for the protection or enforcement of a *right*, or the prevention, redress, or punishment of a wrong.

If cases can be made up by act of Congress and citizens can be made parties defendant, then every vexed question involving the extent of powers of the Federal and State governments, and the boundaries of the various departments of government, may thus be settled, contrary not only to the intention of our written Constitution, but to the policy of our race from the earliest times.

In the administration of justice our courts determine what is the law of the land, and if laws conflict the courts ascertain which shall prevail. They do this *in cases* which are presented to them. "They do not sit to determine *in the abstract* the meaning of laws, but to *decide causes* between man and man." (4 Minor's Inst., 865.)

Judge Cooley says:

> "Our constitutions have provided no tribunal for the specific duty of solving in advance the questions which arise. * * * No mode has yet been devised by which these questions of conflict are to be discussed and settled as abstract questions, and their determination is necessary or practicable only when public or private rights would be affected thereby. They then become the subject of legal controversy; and legal controversies must be settled by the courts." (Const. Lim., 40, 44.)

And he cites Dr. Lieber, that—

> "when laws conflict in *actual cases* they [the courts] must decide which is the superior law, and which must yield." (Lieber, Civil Liberty and Self Government.)

When a State sues an individual in this court, as under the Constitution it is permitted to do, it must show that it "is not a party in virtue of its sovereignty;" that "it assumes and claims, not an abstract right, but a direct interest in the controversy, and that the power of this court can redress its wrongs and save it from irreparable injury." (*Pennsylvania* v. *Wheeling Bridge Co. et al.*, 13 How., 559.)

Such must be the case in order that the jurisdiction of this court may be sustained when a State is a party, and no less will be required of the United States.

> See, also, *Curtner* v. *United States* (*supra*), 149 U. S., 662, citing *United States* v. *San Jacinto Tin Co.*, 125 U. S., 273, 285, and *United States* v. *Beebe*, 127 U. S., 338, 342.

The question submitted for final determination to the Court of Claims, and to this court, by the Act of December 28, 1892, is, as we have seen, whether La Abra award was obtained in whole or part "by fraud effectuated by means of false swearing or other false and fraudulent practices," etc. But the act is entitled "An act to amend and enlarge the act approved June 18, 1878," in which original act the President was requested to examine and decide whether "the honor of the United States, the principles of public law, or considerations of justice and equity" required that La Abra award should be opened and the case retried. The preamble of the jurisdictional act brings in this question of national honor again, and avers that the Secretary of State has heretofore reported that "the honor of the United States requires that said case should be further investigated by the United States;" so that the fundamental issue here is, whether "the honor of the United States requires" that Mexico should be re-

leased from her solemn covenant with the United States in the Convention of July 4, 1868—

> " to consider the decision of the Commissioners conjointly, or of the Umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by him or them, respectively, and to give full effect to such decision, without any objection, evasion or delay whatsoever."

This is the fundamental international question that arises upon the proceedings taken on behalf of Mexico, for, as stated by Mr. Chief Justice Waite, in *La Abra Co.* v. *Frelinghuysen*, 110 U. S., 72—

> " What she asks is *the consent of the United States to her release from liability under the convention on account of the particular awards now in question.*"

That fundamental international question was pending in the Senate, where it properly belonged,* when the

*After the Senate had adopted the report of the Judiciary Committee and the House had unanimously consented to the withdrawal of the bill for submitting the question of fraud to the Court of Claims (*supra*, 22), the Mexican government renewed its efforts for an international revision of the award; and in a note of January 19, 1882, the Mexican minister (Mr. Zamacona) said to the Secretary of State (Mr. Frelinghuysen):

> "What has occurred in the matter thus far shows the propriety of adopting the most direct of those means, and the one which ought, perhaps, to have been adopted as soon as the complaint on account of fraud was presented. Such a means would be the submission of the charge of fraud to the examination of a commission similar to that which made the award in favor of Weil and of the Abra Company."

With this note Mr. Zamacona enclosed a draft of a convention (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 642), and subsequently Mexico's learned counsel argued before the Secretary of State, in the words of the first report of the Foreign Affairs Committee on the subject—

> "That the question presented, in so far as it relates to the payment of money under the awards received from Mexico, is *entirely within the jurisdiction and discretion of the treaty-making power under the Constitution.*" (*Ib.*, 657; Rep. 27, H. R., 45th Cong., 2d Sess., 8.)

The binding force of Mexico's submission of the question between her and the United States to the treaty-making power was

learned Chief Justice used the language just quoted; and it is this same fundamental international question which is brought here by this so-called suit in equity. And, as already observed, the jurisdictional act, while submitting the question of fraud in obtaining the award to the final determination of the Court of Claims and this Court on appeal, itself attempts to dispose of the fund in controversy by authorizing the President to return to Mexico such sum as "*such court shall decide* that such persons are not entitled *in justice and equity* to receive out of such fund."

Thus the interest which the United States has in this question is (1) of a moral sort, (2) belonging to diplomacy, and (3) heretofore decided in the proper diplomatic forum.

The Court of Claims held that—

> "The United States have *no pecuniary interest* in the result of the proceeding, but, *as a sovereign*, are interested in preserving the rights of its citizens as they may be affected by *the acts of a foreign government*, and in *the honor of the government* in not enforcing the payment of an unjust claim *against one of the great family of nations*. Aside from the question of *national duty* upon the part of the Government of the United States, the real parties in interest are the Republic of Mexico, La Abra Mining Company, and such citizens of the United States as have a pecuniary interest, by assignment, in the enforcement of the award against the government of Mexico."

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expressed by Mr. Bayard in his report of May 6, 1886, to the President, as follows (Ex. Doc. 140, Sen., 49th Cong., 1st Sess., 4):

> "It seems proper here to observe that by the voluntary negotiation of this second treaty Mexico submitted the question (whether these claims should be readjudged or no) to the treaty-making power of the United States, of which it was well known that two-thirds of the Senate was an essential part, and that *the relief sought from the effects of the former treaty could only be secured by obtaining such a constitutional majority in its favor*."

On its own showing, and the foregoing authorities, the court should have dismissed the bill for want of such interest in the United States as would support it, and because it does not present a case within the meaning of the Constitution.

II.

Neither the Court of Claims nor this Court has jurisdiction of the bill, because it seeks to review and reverse the action heretofore taken by the President of the United States in a matter of international concern exclusively within his discretion and control.

It will be observed from citations in the History of the Case (*supra*, pp. 19, 20), that upon Mr. Evarts' second report, which dealt exclusively with La Abra award, the President paid to the Company and its assigns, in September, 1879, their share of the three installments which had been received from the Mexican government, while he continued to withhold payment on the Weil award.

This second report of Mr. Evarts and the payments made by the President to the Company and its assigns, on his approval of Mr. Evarts' conclusions, are not mentioned in the statement of facts made by Mr. Chief Justice Waite in delivering the opinion of the court in *La Abra Company* v. *Frelinghuysen*, which was considered and reported in connection with *Frelinghuysen* v. *Key*, 110 U. S., 63. In the opinion (pp. 68, 69), Mr. Chief Justice quoted the whole of Mr. Evarts' first report, except the last paragraph, which reads as follows:

> "*Fourth.* It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of

> further investigation in this case to make the distribution of the installments in hand. I have this subordinate consideration still under examination, and should you entertain this distinction, will submit my further conclusions on this point."

The Chief Justice then says, referring to the part of the report which he had cited (p. 69):

> "This action of the President was communicated to Congress under date of April 15, 1880, by his forwarding a copy of the report of the Secretary of State, which concludes as follows."

Here the Chief Justice cites the notice to Congress with which Mr. Evarts' final report closes (*supra*, p. 20). This final report, as already observed, contains his reports of August and September, 1879, with some later reflections on the general subject of international arbitration. The Chief Justice then observes (p. 69):

> "No definitive instructions were given by Congress in respect to the matter during that session, and after the close of the session payments were made on these awards by the direction of the President, the same as on the others."

From this it might be inferred that no payments had been made by the President to La Abra Company until "after the close of the session." This was the fact in the Weil case, but, as heretofore shown (*supra*, pp. 19, 20), the President had approved Mr. Evarts' fundamental distinction between the two cases, and had paid over to the Company and its assigns their share of the three installments on hand, in September, 1879.

For the Chief Justice's purpose it may not have been material to state these facts, for he was giving a history of the two cases with reference to a pending treaty for the retrial of both. But a good deal of confusion has

arisen from the intimate and long-continued association of the two cases. Mr. Chief Justice says (110 U. S., 69):

> "After President Arthur came into office he examined the cases further, and, 'believing that said award was obtained by fraud and perjury,' negotiated a treaty with Mexico providing for a rehearing."

It might be supposed that "said award" meant or included La Abra award; but it was in answer to *Key's* petition for mandamus that Secretary Frelinghuysen expressed President Arthur's belief "that said award was obtained by fraud and perjury;" while, as already observed (*supra*, p. 25), the Secretary simply demurred to the petition of La Abra.

In the body of the opinion, referring again to the first report of Mr. Evarts, Mr. Chief Justice Waite says (110 U. S., p. 75):

> "He did report officially that he had 'grave doubt as to the substantial integrity of the Weil claim' and the 'sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of La Abra * * * Company.'"

But nowhere in the opinion is there any reference to the payment which the President made to the Company in September, 1879, or to his approval of Mr. Evarts' conclusion that any further investigation of La Abra award should be confined to the alleged fraudulent exaggeration of damages.

Mr. Chief Justice also says (p. 75):

> "From the statements in the answer of Secretary Frelinghuysen in the Key case, it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested decisions should be opened and the claims retried."

As matter of fact, no "further evidence" had been

found or considered by President Arthur in La Abra case, and the statement of the Chief Justice on that point must be understood as referring exclusively to the case of Weil.

President Hayes' decision, on Mr. Evarts' report, in regard to La Abra award—followed, as it was, by the payment of large sums of money to the persons concerned—could have been properly overruled by President Arthur only upon new evidence of the most convincing kind. (*United States* v. *Bank of Metropolis*, 15 Pet., 377.)

One of the reasons why the Senate rejected the convention for a rehearing may have been that it proposed to submit to a new Commission the question of Mexico's liability to La Abra Company, which had not only been decided by Sir Edward Thornton, on the disagreement of the Commissioners, in the original trial, but had again been decided by President Hayes in the examination which he had made at the request of Congress. That this was one of the grounds on which the new convention was rejected is more than probable, in view of the previous unanimous report of the Senate Judiciary Committee on this very point. (*Supra*, p. 22.)

The reference in the preamble of the jurisdictional act to Mr. Evarts' conclusions and the President's action in this case is entirely misleading. That reference is as follows:

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican government as to the case of La Abra Silver Mining Company, has heretofore reported that "the honor of the United States requires" that *said case* "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud,"

> but that "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress."

The words quoted in the preamble are taken from Mr. Evarts' *first* report, which dealt with the Weil as well as La Abra award.

By making the words "said case" refer to "the case of La Abra Silver Mining Company," the preamble applies the language of Mr. Evarts to La Abra award alone, whereas it referred to the Weil award also; and, by omitting the opening part of the paragraph, it conceals the fundamental distinction made by Mr. Evarts between the two cases; namely, that in the one case "grave doubt" was brought upon "the *substantial integrity* of the claim," and, in the other case, upon "the sincerity of the evidence as to the *measure of damages;*" or, in other words, that La Abra Company had a valid claim against Mexico, although the allowance for damages might have been excessive; while there was "grave doubt" as to the actual existence of the subject-matter of the Weil claim.

The next part of the quotation from "the Secretary of State" in the preamble of the jurisdictional act, *i. e.*—

> "'that the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses,' and that 'the authority for such an investigation must proceed from Congress'"—

is also from Mr. Evarts' first report. But no reference is made, in the preamble, to the closing paragraph of that report (*supra*, 19), which shows that Mr. Evarts still had

another question in regard to La Abra award under consideration, and intended to submit his "further conclusions" to the President if he approved the distinction taken between the two cases.

The preamble of the jurisdictional act, although it undertakes to state the substance of the action of the Secretary of State, or rather of the President, under the 5th section of the act of June 18, 1878, as the basis for further legislation by Congress, is entirely silent as to the "further conclusions" of Mr. Evarts in this case, which, as we have seen (*supra*, 19, 20), were also approved and carried into effect by the payment of large sums of money to the Company by the President.

Referring to his second report in the case of La Abra, Mr. Evarts says in his final report to the President (Ex. Doc. No. 150, Sen., 46th Cong., 2d Sess., p. 3):

> "This latter conclusion having also received your approval, and the results stated in both these reports having been communicated both to the Mexican government and the claimants, the payment was *made* upon the La Abra award of the distributive share of the installments then in hand, and payment was *withheld* of the distributive share of such installments upon the Weil award."

This is the fact that should have been stated in the preamble of the jurisdictional act—which was framed more than ten years subsequently—if any of the facts were to be recited. We have already seen that the Secretary's final report and the President's action were regarded by the Judiciary Committee of the Senate in 1880 as conclusive in this case (*supra*, p. 22).

But twelve years later the Senate was assured during the debate on the bill that the President, "aided by Mr. Evarts," had "announced that the honor of the United States and the principles of public law and justice and

equity required that this award should be set aside!" (*Congressional Record*, January 28, 1892, p. 642.) This assurance was given, in substance, again and again, and the Senate was also assured that four Presidents and four Secretaries of State had come to the same conclusion; whereas neither Mr. Blaine nor Mr. Frelinghuysen had ever made any report on the merits of La Abra award, and as late as 1888, President Cleveland, through Mr. Bayard, had reiterated, in a message to Congress, President Hayes' conclusion, as expressed by Mr. Evarts in 1879, that "the allegations of fraud in relation to La Abra award affect only the measure of damages and not, as in the Weil case, the question whether any ground of claim ever existed." (Ex. Doc. No. 109, Sen., 50th Cong., 1st Sess., p. 6.)

Not only was Congress misinformed by the preamble of the bill itself (now the jurisdictional act) in regard to Mr. Evarts' report and President Hayes' decision in this case, but Senators were also misinformed, during the debate on the bill, as we have already seen (*supra*, 6, 13, 15), in respect of other matters material to the question under discussion. There can be no reasonable doubt that the act under which this proceeding is brought was passed under a misapprehension of the facts. It may be said of it, as it was said of another act in the argument of a famous case:

> "The enactments of the act proceed on false recitals, and in the Earl of Leicester *v.* Heyden (1 Plowden, 398; and see, also, 1 Inst., 110*a*; and Priddle and Napper's Case, 11 Rep., 14*a*), it is shown that where such is the case, the subject is not concluded even by a statute; for it is there said: 'For these recitals can not be taken to proceed but upon information, and the Court of Parliament may be misinformed as well as other courts; and when they have recited a thing which is not true, it can

not be otherwise taken but that they were misinformed, for none can imagine that they would purposely recite a false thing to be true: for it is a court of the greatest honor and justice, of which none can imagine a dishonorable thing.'" (De Bode *v.* Regina, III Clark's H. L. Cas., 459.)

In his final report Mr. Evarts made it very clear that he did not think that the award in this case should be disturbed. After referring to the Commissioners as "able and eminent men, enjoying the full confidence of the governments by whom they were respectively appointed," and to the Umpire as "pre-eminently fitted for his laborious and responsible duties by his long diplomatic experience, his recognized ability, his high character, and his special knowledge of the two countries whose citizens and governments were interested in the arbitration," Mr. Evarts expresses the result of his maturest reflection, as follows (Ex. Doc. No. 150, Sen., 46th Cong., 2d Sess., p. 4):

> "Before this Commission the government of Mexico had full opportunity and ample time to present its defense, both in evidence and argument, against any claim that was submitted.
>
> "In the La Abra case *a large amount of testimony was taken on both sides, the comparison and valuation of which was within the power of the Commission; and the opinion of the Umpire shows that it was carefully considered.*"

Suppose that this statement, or the substance of it, had been stated in the preamble of the jurisdictional act?

Mr. Evarts then refers to the explicit terms in which the convention provided for the finality of the awards,*

[From Article II.]

* "The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the Umpire, as the case may be, as absolutely final and con-

and to the fact that certain claimants, citizens of the United States, were dissatisfied with the decisions of the Commission, and had appealed to their Government for relief.* On this point, Mr. Evarts says:

> "The adherence of the Government of the United States to the strict letter of its convention—that the decision of the Commissioners should be absolutely final in every case, and a complete bar to any claim arising from transactions prior to its ratification—has hitherto prevented any effort on the part of this Government to renew such discussion in favor of its citizens.
>
> "But if it be once admitted that for any reason short of an impeachment of the integrity of the Commission its proceedings can be reopened for review and its decisions for reversal, there will not be wanting numerous urgent appeals to the justice and sympathy of the Government to extend this measure of relief to many who think that their claims have been erroneously estimated or rejected." †

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clusive upon each claim decided upon by them or him, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever."

ARTICLE V.

"The high contracting parties agree to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of every claim upon either government, arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible." (Treaties and Conventions, 1776–1887, pp. 702, 703.)

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* Report on the petition of the Rosario and Carmen Mining Company of San Francisco, Cal. (H. R. No. 700, 45th Cong., 2d Sess.)

† It may be that one of the reasons why the Senate, in 1886, rejected the proposed convention for reopening the Weil and La Abra awards, was the want of reciprocity shown by the fact that no provision was made for rehearing any of the claims of citizens of the United States which were rejected by the Commission, although so strong a showing for such a rehearing was made by the Rosario and Carmen Mining Company of San Francisco.

Towards the close of this report Mr. Evarts said:

> "The principle of the settlement of international differences by arbitral commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitration depends so essentially upon the certainty and finality of its decision, that no government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion. It is only in extreme cases, *where the Commission is itself charged with corruption, or where it has clearly exceeded its powers* in deciding matters not submitted to its judgment, *that prompt and cheerful acquiescence should not be rendered to its action. No such charge is here suggested.* * * *
>
> "But the awards made by this Commission were something more than the settlement of mere private claims—it was the adjustment of long-standing national differences. And if in the result more or less was added to or taken from particular awards, still if on the whole a fair and just balance has been struck, if considering all that has been given and all that has been refused the examination has been careful and the judgment impartial, *it is the interest and the duty of Governments to maintain it.**

Referring to this final report of Mr. Evarts, the Mexican Minister in Washington said:

> "The paper proceeds at some length to state the

Awards were made on claims growing out of the killing and wounding of United States citizens in an armed attack organized by a Mexican alcalde against the Company's establishment in Mexico, but the Company's own claim was disallowed. The Company charged in its petition to Congress "that certain evidence lawfully taken in, and very material to, the case, was suppressed and kept from said Commission by the Mexican government," a charge which, if established, would have laid a proper foundation for a rehearing, because the alleged fraud was extrinsic or collateral to the award, and had not been tried or triable by the Commission.

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* "All courts have recognized the wisdom of Lord Redesdale's remark, that 'it is more important that an end should be put to litigation than that justice should be done in every case.'" (*Ritter* v. *Press Co.*, 68 Mo., 458.)

> 'grounds' on which the Secretary declined to do what he did not do, *i. e.*, reopen the cases diplomatically, and these grounds were stated so strongly as to amount to an argument *against any investigation whatever.*" (Mr. Romero to Mr. Frelinghuysen, January 25, 1884, Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., p. 769).

The report of the Judiciary Committee and the action of the Senate, on the bill for referring Mexico's charges of fraud to the Court of Claims, have been referred to in the History of the Case ; also the action of the House in giving unanimous consent to the withdrawal of a similar bill, and of the report of the Foreign Affairs Committee upon it, from further consideration (*supra*, 22).

It is difficult to see how Congress could have more clearly or definitively refused to furnish the means necessary for any further investigation in this case, or to make any further representations to the President on the subject. In referring to the 5th section of the act of June 18, 1878, the Senate Judiciary Committee said :

> "In adding this section to the act providing for the distribution of the awards, it was not the purpose of Congress to pass upon the character of the claims referred to in it, as the proviso attached to said section expressly declares."

And as to Congress making any independent examination, which the committee seems to have thought Mr. Evarts had suggested, the committee said :

> "This would involve an investigation by Congress of facts of an international character, which, in the opinion of the committee, *properly belongs to the Executive Department*, and which it was the intention of the fifth section of the act of June 18, 1878, *to leave with the department.*" (Rep. No. 712, 46th Cong., 2d Sess., p. 6.)

It was on this ground that the committee reported against the bill (*supra*, 21), *i.*, *e.*, that it—

> "proposes to withdraw these two claims from the dominion of international jurisdiction and place them before a tribunal organized, and existing solely, by virtue of the laws of this country."

The eminent statesmen and jurists who were members of the committee at that time—Bayard, Carpenter, Conkling, Davis, Edmunds, Garland, Lamar, McDonald, and Thurman—knew that the Law of Nations, under which this claim had arisen, and under which it had been tried and determined by a Mixed Commission, had a jurisdiction and jurisprudence of its own, and that the proceedings of such an international court could not be nullified or reviewed in the manner proposed in the bill. This conclusion the committee stated as follows:

> "The second article of that treaty bound the two governments absolutely and conclusively by the final awards of the Commission and Umpire in all cases coming within its provisions; and it would seem right that if it is to be set aside as to any of the claims it ought to be by a new convention, in which provision should be made for doing justice to all claimants."

Here the diplomatic nature of the question is clearly suggested; *i. e.*, if the President negotiates for a review, it should be on reciprocal terms and comprehend the whole situation. Indeed, the Convention that was subsequently concluded provided (Article V)—as the jurisdictional act does not provide—for the indemnification of "any *bona fide* third parties who have, with the observance of due care and diligence, become possessed of any portion of said claims for a just and valuable consideration." (Ex. M., Confidential, 47th Cong., 1st Sess., p. 4.)

The refusal of the Senate and the House, on such explicit notice from the President, and on such deliberation in both branches, to interfere further in the matter was regarded by the Executive as final, and the Mexican government was so informed by Mr. Evarts. This appears, not only in Mr. Evarts' note to Mr. Navarro (*supra*, 23), but also in a communication from Mr. Romero to Mr. Frelinghuysen, dated January 25, 1884, in which he referred to an interview held between Mr. Evarts and Mexico's counsel in August, 1880, as follows (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 771):

> "Mr. Evarts, in reply, gave a detailed history of the matter, and explained the views which, he said, he and the President held as to the discretion of the Executive. He said that they interpreted the report of the Judiciary Committee and the action of the Senate on the Morgan bill as *concluding the question*, and as *notifying the Executive* that, if it declined to reopen the awards by diplomatic negotiation, *Congress would* NOT REOPEN THEM AT ALL."

The effect and conclusiveness of the action which was taken, as aforesaid, by President Hayes, in response to the request of Congress, upon the reports of Mr. Secretary Evarts, in the case at bar, are stated by Mr. Chief Justice Nott, in his dissenting opinion, as follows (*Record*, 843):

> "In 1879 the diplomatic organ of the American Government, the Secretary of State, '*upon a renewed examination of the matter as laid before him by the Mexican Government*,' * decided '*that the proper limits of the further consideration* * which the honor of the Government should prompt it to give to this award *should confine the investigation to the question of a fraudulent exaggeration of the claim.*' *
>
> "In other words, the Secretary of State decided

* These *italics* are the Chief Justice's.

that the acts of the Mexican officials to these American claimants were such as rendered the government of Mexico responsible from an international point of view.

"This decision is rendered unequivocal and unquestionable by the fact that the President, upon the recommendation of the Secretary, then proceeded to deal with the claim upon the basis that *the responsibility of Mexico for the acts and inaction of its officers was a question finally settled.* He did this by paying out a portion of the award to the claimants and withholding only enough to meet the charge of 'fraudulent exaggeration.'

"The case therefore comes into this court *with the international question determined by the Umpire and the responsibility of the Mexican government reasserted by the constitutional and proper diplomatic authority of the United States.*"

There can be no doubt that the examination and settlement of the question which the President was requested to examine and settle in respect of La Abra award, by the 5th section of the Act of June 18, 1878, were exclusively within his constitutional power.

The original claim of the Company was of international and not of municipal jurisdiction, and belonged to "the executive branch of the government, which is charged with our foreign relations." (*Williams* v. *Suffolk Ins. Co.*, 13 Pet., 420.)

In *Emerson* v. *Hall*, 13 Pet., 409, it was held by this court—distinguishing between a claim (like *Emerson's*), which involved no legal right or obligation, but simply appealed to the generosity of the United States, and a claim (like La Abra's) against a foreign government—that (p. 413):

"The demand is, in such case, *founded upon the Law of Nations*, and the obligation is perfect upon the offending government. It is true, remuneration

can not be recovered against the government by action at law; but, if justice be not done, *the government of the injured citizen*, in the exercise of its discretion, will protect and enforce his rights."

And in *Milnor* v. *Metz*, 16 Pet., 221 (referring to *Comegys* v. *Vasse*, 1 Pet., 196), this court said (p. 227):

> "That although the illegal sentences of the Spanish prize courts were irreversible, the (injured) party had not lost all right to justice, or claim, *upon principles of international law*, to remuneration; that he had a *right* both to the justice of *his own* and the *foreign government;* and that this right passed by the general assignment of the bankrupt."

In *United States* v. *Diekelman*, 92 U. S., 520, the court, by Mr. Chief Justice Waite, said (p. 524):

> "One nation treats with the citizens of another only through their *government.* A sovereign can not be sued in his own courts without his consent. * * * Hence a citizen of one nation wronged by the conduct of another nation, must seek redress *through his own government.* His sovereign must assume the responsibility of presenting his claim, or it need not be considered. If this responsibility is assumed, the claim may be prosecuted *as one nation proceeds against another*, not by suit in the courts, as of right, but by *diplomacy*, or, if need be, by war."

In *DeBode* v. *Regina*, 3 Clark's H. L. Cas., 465, Lord Chancellor Truro said:

> "It is admitted law, that if the subject of a country is spoliated by a foreign government, he is entitled to obtain redress *through the means of his own government.* But if from weakness, timidity, or any other cause on the part of his own government, no redress is obtained from the foreigner, then he has a claim against his own country."

So Vattel (b. II, ch. VI, § 71):

> "Whoever uses a citizen ill, indirectly offends the State which is bound to protect this citizen, and *the sovereign of the latter* should avenge his wrongs, punish the aggressor, and, if possible, oblige him to make full reparation; since otherwise the citizen would not obtain the great end of the civil association, which is safety."

And Phillimore (III Inter. Law, p. 10), after saying that a State may be directly injured by a violation of the rights affecting its collective capacity, says it may also be injured indirectly—

> "by a violation of the right of the individual to whom *it owes protection in return for his allegiance.*"

President Hayes took none of his power in this matter of La Abra award from Congress. He was invested with it by the Constitution, which put him in charge of the intercourse of the United States with foreign nations. So said Mr. Chief Justice Waite, speaking for this court, in *Frelinghuysen* v. *Key*, 110, U. S., 74:

> "The fifth section, as we construe it, is nothing more than an expression by Congress, in a formal way, of its desire that the President will, before he makes any payment on the Weil or La Abra claims (awards) investigate the charges of fraud presented by Mexico. * * * From the beginning to the end it is, in form even, only a *request* from Congress to the executive. * * *
>
> "In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry *without this request* as with it, and his action with the statute in force is no more binding on his successor than it would have been without."
>
> * * * * * *
>
> (P. 75): "Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators

> until the diplomatic negotiations between the two governments on the subject are finally concluded. That discretion of the executive department of the Government can not be controlled by the judiciary."

Prior to this decision, President Arthur made it plain that he was acting in the exercise of his constitutional functions in respect of these awards, by informing the Senate, in transmitting the convention for their review, that he had deemed it proper to avail himself—

> "of the authority given to the executive by the Constitution, and of which authority the act of Congress of June 18, 1878, is declarative." (Ex. M., Confidential, 45th Cong., 1st Sess., p. 1.)

If he believed that the awards should be opened and the claims retried, of what avail would be his right to negotiate with Mexico for such a retrial if he could not, pending the negotiations, withhold payment of the funds in question?

In *Boynton* v. *Blaine*, 139 U. S., 306, Mr. Chief Justice Fuller, in his statement of the case, quotes as follows from the answer of the Secretary of State to Boynton's petition (p. 311):

> "That the petition related to a matter 'which falls exclusively within the powers and competency of the President of the United States and this respondent, as subordinate to him and subject to his direction and control, and which doth in nowise fall within the jurisdiction and competency of the judicial department of the Government of the United States; and that it would involve an interference of the said judicial department with a matter which is exclusively committed by the Constitution to its coordinate, the executive department, for this honorable court to take cognizance of the matter of the relator's petition.'"

The learned Chief Justice said, in delivering the

opinion of the court, that it had no disposition to recede from the principles announced in *Frelinghuysen* v. *Key*, and added, after quoting the passages hereinbefore cited (p. 323):

> "The new convention was then pending in the Senate, and it was clear that the discretion of the executive department of the Government to withhold all further payments to the relators until the diplomatic negotiations between the two governments were finally concluded, could not be controlled by the judiciary."

If President Arthur had constitutional authority to negotiate the convention for a rehearing, and to withhold payment pending the negotiations, President Hayes had constitutional authority to adopt Mr. Evarts' conclusions in respect to La Abra award, and to make payment, as he did, to the Company and its assigns. And this action can not be reviewed by the courts. La Abra Company stands here invested and shielded with the Secretary of State's report and the President's decision that it had a valid claim against Mexico and that "the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim."

Upon the conclusiveness of such action and the relation which the Secretary of State sustains to the President, Mr. Chief Justice Marshall, in *Marbury* v. *Madison* (1 Cr., 63), observed:

> "By the Constitution of the United States the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and *is accountable only to his country in his political character and to his own conscience.* To aid him in the performance of these duties he is authorized

to appoint certain officers, who act by his authority and in conformity with his orders.

"In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still, *there exists and can exist no power to control that discretion.* The subjects are political. They respect the nation, not individual rights, and being intrusted to the executive, *the decision of the executive is conclusive.* The application of this remark will be perceived by adverting to the act of Congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, *can never be examinable by the courts.* * * *

"The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which *the executive possesses a constitutional or legal discretion,* nothing can be more perfectly clear than that *their acts are only politically examinable.*

As said by Mr. Justice Gray, speaking for the court, in *Jones* v. *The United States,* 137 U. S., 202–224:

"The duty of the judiciary is to decide in accordance with what the President in the exercise of a discretionary power confided to him by the Constitution and laws, has actually done."

And the learned justice cited *Williams* v. *Suffolk Ins. Co.,* 13 Pet., 417, in which it was said:

"Can there be any doubt that when the executive branch of the government, which is charged with our foreign relations, shall, in its correspondence with a foreign nation, assume a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department? And in this

> view it is not material to inquire, nor is it the province of the court to determine, whether the executive be right or wrong; it is enough to know that in the exercise of his constitutional functions he has decided the question."

Not only is the President's action in the exercise of his constitutional authority definitive and final, but the authority itself is exclusive, and he can not delegate it or refuse to exercise it when the proper occasion arises.

It was in maintenance of this principle that the Judiciary Committee made the following observations (a part of which has already been quoted) in regard to the suggestion in Mr. Evarts' final report, that Congress should now decide whether a further investigation should be made:

> "In the investigation that has taken place in the State Department, under the authority of the fifth section above quoted, no suggestion appears in the report of the Secretary 'that the honor of the United States, the principles of public law, or the considerations of justice and equity require that this case should be retried,' but, on the contrary, *after stating considerations of public policy which would seem to forbid the reopening of the case,* the questions of honor, principles of public law, and considerations of justice and equity are referred to Congress to decide. *This would involve an investigation by Congress of facts of an international character which, in the opinion of the committee, properly belongs to the executive department, and which it was the intention of the fifth section of the Act of June 18, 1878, to leave with the department.*"

On the exclusiveness of the constitutional authority vested respectively in the legislative, executive, and judicial departments of the Government, and the danger of encroachment by any on the province of the other, Mr.

Justice Miller said, for the court, in *Kilbourn* v. *Thompson*, 103 U. S., 168, 191:

> "It is also essential to the successful working of this system that the persons intrusted with power in any of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department, and no other."

So in the *Sinking Fund Cases*, per Mr. Chief Justice Waite (99 U. S., 718):

> "One branch of the Government can not encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

And Mr. Justice Story, in *Martin* v. *Mott* (12 Wheat., 19):

> "Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction that the statute constitutes him the sole and exclusive judge of the existence of these facts."

See, also, *Luther* v. *Borden*, 7 How., 1, followed in *Den* v. *Hoboken Land and Imp. Co.*, 18 How., 272; *White* v. *Hart*, 13 Wall., 646; *Phillips* v. *Payne*, 2 Otto, 130; and *United States* v. *Lee*, 106 U. S., 196.

In this last-named case, the court said:

> "It has been uniformly held that * * * questions, the decisions of which * * * might involve war or peace, must be primarily dealt with by those departments of the Government which had the power to adjust them by negotiation, or to enforce the rights of the citizen by war.
>
> "In such cases the judicial department of this Government follows the action of the political branch." * * *

In a similar controversy with Venezuela, growing out of the Caracas awards, Congress itself, after discussion and deliberation in both Houses, extending through a period of ten years, took final action in accordance with these principles. An act had been passed on the 25th of February, 1873, declaring—

> "That the adjudication of claims by the convention with Venezuela of April 25, 1866, * * * is hereby recognized as final and conclusive, and to be held as valid and subsisting against the Republic of Venezuela." (17 Stats., 477.)

Five years later—June 20, 1878—this was repealed, with a proviso—

> "That nothing herein, or in the act hereby repealed, shall be construed as an expression of any opinion on the part of Congress in respect to the validity of any awards made under said convention, or as to the propriety of a negotiation by the Executive of a new convention in respect to the same." (20 Stats., 241.)

Shortly prior to this—April 24, 1878—the House Committee on Foreign Affairs, in a report on the petition of the Rosario and Carmen Mining Company for a rehearing of their claim against Mexico, had reported as follows:

> "The committee having recently had under consideration House Resolution No. 39, looking to the suspension of payments of two of the claims decided (Weil and La Abra) by Sir Edward Thornton, Umpire, under the treaty aforesaid, have submitted to the House a report (H. R. 27, 45th Cong., 2d Session.) As the same questions arise under that resolution as are presented by the petition of claimants, the committee beg leave to refer to and adopt the reasons and conclusions contained in that report as and for their report in this matter.

"They here repeat, as they there state, that, in their opinion, *this House has no jurisdiction of the matter referred to them by the petitioners.*" (Rep. No. 700, H. R., 45th Cong., 2d Sess., p. 2.)

Bills having been subsequently introduced for a review of the Venezuelan awards by the Court of Claims (S. 799 and 893), the Senate Committee on Foreign Relations reported, on the 23d of March, 1882, by Mr. Windom:

"That, in our opinion, the Court of Claims *can not be clothed with jurisdiction to modify or annul the action of the Commission* organized under the provisions of the treaty of April, 20, 1866, between the Government of the United States and Venezuela.

"The committee are also of opinion that *the Department of State has full power and authority touching the distribution of the moneys paid in under the awards made by said Commission, and they therefore recommend the indefinite postponement of said bills.*" (Rep. No. 311, Sen., 47th Cong., 1st Sess.)

About a year later—May 3, 1883—Congress passed a joint resolution requesting the President to open diplomatic correspondence with the government of Venezuela for the appointment of a new Commission, on the ground that since the dissolution of the Caracas Commission—

"*serious charges, impeaching the validity and integrity of its proceedings,* have been made by the Government of the United States of Venezuela, and also charges of a like character by divers citizens of the United States of America, who presented claims for adjudication before that tribunal * * * and the evidence * * * tends to show that such charges are not without foundation." (22 Stats., 643.)

A convention was subsequently concluded between the two governments (December 5, 1885) and the claims were readjudicated by a new Commission in 1889–'90.

This was the proper course to follow, and it was followed during the same period—1882–'86—in the case at bar, by the negotiation of the new convention, which was rejected by the Senate (*supra*, 25), but Mexico (or rather, perhaps, General Slaughter) did not accept the result, and renewed the appeal to Congress.

From what has been shown, under this head, it is manifest that the only question left open by President Hayes for further investigation was, in the language of Mr. Evarts' first report, "the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of La Abra * * * Company."

In his second report, as already stated, Mr. Evarts said that on a renewed examination of the matter as laid before him by the Mexican government he was—

> "confirmed in the opinion that *the proper limit of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim.*"

On this branch of the discussion it is to be observed (*a*) that the same question of exaggeration was raised before the Commissioners and Umpire, and determined by them under the Convention; (*b*) that it was afterwards examined, in 1886, by the Foreign Affairs Committee of the House on the "newly-discovered evidence," and decided in favor of the Company; (*c*) that there was evidence (which Mr. Chief Justice Nott seems to have overlooked) sustaining the Umpire's allowance for the ores on the patio; and (*d*) that equity will not relieve against an award for mere excess of damages.

(*a*) The question of fraudulent exaggeration of damages was raised and determined at the original trial. At the

close of his argument before the Commission the agent for Mexico, Mr. Avila, said (*Record*, 422):

> "It is not to be doubted that the government of Mexico is under no obligation to pay all that is claimed by the Company, * * * because when the expense incurred for the working of the mines, the losses which it is claimed were sustained, and the profits which it was hoped to realize are compared with the enormous amount claimed, the exaggeration of the Company's pretensions becomes perfectly evident."

The Mexican Commissioner, Mr. Zamacona, after showing how the claim had been increased by more than a million dollars after its presentation to the Department of State, said, in his opinion adverse to the claim:

> "But when, as in the present case (item No. I), two hundred and forty-one thousand seven hundred and ninety-one dollars is charged as the whole amount expended in the working and for all the responsibilities incurred in carrying on the business, this amount and the original cost constitute their total value, and all which can rationally be demanded for the property." (*Record*, 387.)

This was substantially the view taken by the Umpire, for, instead of allowing the $3,000,000 claimed by the Company for the value of the mines, he allowed only for actual expenditures and for the ore which remained on the "patio" when the Company abandoned its property, as appears from his award (*Record*, 9):

> "The Umpire is of opinion that the claimants should be reimbursed the amount of their expenditures, and also the value of the ores extracted which they were forced to abandon, with interest upon both these sums. He can not consent to make any award on account of prospective gains, nor on account of the so-called value of the mines."

(*b*) The Foreign Affairs Committee of the House made

a thorough examination of this question of exaggeration, and in the report made by Mr. Daniel, August 5, 1886, stated their conclusion, as follows:

> "Undoubtedly some of the items of the large claim asserted against Mexico by the La Abra Company are shown to have been exaggerated and others unfounded. But this remains when all that can be reasonably said in favor of the interference proposed has been considered—*that there was ample evidence before Sir Edward Thornton that is not impugned by any new evidence to have sustained and warranted his award;* that the award did not embrace damages on account of the items that have been surcharged or apparently falsified; that that award was far below what was claimed—that it was far below in amount the damages which, in the opinion of unprejudiced witnesses, the claimant Company suffered; that it did not embrace speculative damages; that the mistreatment of the Company by Mexican officials and people is proved by their own testimony; and that, conceding all that by reasonable intendment the newly-discovered evidence proves, the award made had ample foundation in testimony not successfully impeached, and was not in excess of fair compensation for losses suffered according to that testimony." (Rep. No. 3474, H. R., 49th Cong., 1st Sess., pp. 3, 4.)

(c) Mr. Chief Justice Nott, however, came to the conclusion that the allowance of two items of the award was obtained from the Umpire by fraud and perjury.

The two items in question were—"$17,000 derived from reduced ores and $100,000 for ores extracted and abandoned by the Company at its works in Mexico."

> "These two items (says the learned Chief Justice) must have rested upon the testimony of Exall, the superintendent, and Granger, the bookkeeper. The one testified that the abandoned ores must have amounted to from 900 to 1,000 tons, which 'would have yielded the Company, above the cost of reducing them to silver, in my opinion, one million of

dollars;' and the other testified that about 7,000 cargas, 'a little over 1,000 tons,' had been taken out and were abandoned. There were other affidavits cumulative, perhaps corroborative, but it can not be supposed that a man of Sir Edward Thornton's ability, sagacity and experience attached any importance to the *ex parte* affidavits of ignorant Mexican miners taken before an American consul, affidavits which, in the opinion of those who gave them, could have been invested with the obligations of neither law nor religion.

"Granger had already contradicted himself when the case was before the Umpire, having sworn on the 6th of October, 1871, 'that the greater part of the ore taken out by the Company is still on the patio of the hacienda, and that it is good for nothing.' As this testimony of his was not believed by Sir Edward Thornton, and as he expressed regret that the books of the Company had not been produced, it is manifest that he came to a reluctant conclusion upon these items of the award, and depended wholly upon Exall. This becomes more apparent when we find that he adopted as the amount of money derived from reduced ores the exact figures given by Exall—$17,000. In a word, if the testimony of Exall and Granger drop out of the case, these two items of the award must fall." (*Record*, 849.)

The item of $17,000 obtained from a reduction of ores and spent in the business, seems to have been considered false and fraudulent by Mr. Chief Justice Nott, because he accepted as true the allegation of Mr. Attorney General in the bill (*Record*, 18)—

> "That the investment of said Company derived from reduction of its ores was only $420.09, instead of $17,000, as sworn by the said Exall and allowed by said Umpire in his said award."

The learned Chief Justice was of opinion, at one time, that Exall's ledger corroborated the allegation just quoted

from the bill, but when his attention was drawn to the stipulation in regard to the returns from the mill, as shown by that exhibit (*Record*, 745, paragraph 3), he cancelled what he had said on that point (*Record*, 849, 850, *erasure*), and left his final statement (*ib.*, 851)—that the allowance should be reduced to $420.09—not only unsupported by evidence, but disproved by the account book which was produced by the complainant. The amount shown by the book, however, is scarcely $4,000; while Sloan, a witness for Mexico, who had been employed as a clerk by the Company, testified that the Company "had taken out a little less than $6,000 in silver." (*Record*, 120.) But Exall says in his explanatory affidavit of May 1, 1878 (*Record*, 670):

> "Much of the bullion extracted by me was not minted but was sent by me, without the knowledge of anyone at the hacienda but myself, some of it to New York and some of it to San Francisco. This secrecy was necessary, because if it was known it would have been liable to seizure as contraband, and to avoid the possibility of a discovery of the fact no entry of it was ever made in the Company's books, but the proceeds were put into the Company's business as stated in my deposition."

The evidence shows that some very rich ore had been mined and was at Exall's disposal. During Bartholow's superintendency ore so rich was taken out of "La Luz" that it was put up in gunny sacks as fast as mined and *stored in the wareroom.* (*Record*, 210.) This was more than a year prior to the completion of the reduction works, and the evidence shows that if this stock of rich ore was reduced at all, it was reduced by Exall, for there was only one trial of the mill before he became superintendent, and the ore used in that trial was taken from the piles on the patio.

There was also another rich find, in regard to which

De Lagnel testified in the Senate investigation as follows (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 54):

> "I remember the wild excitement among the miners, because when the ore was brought down you could see the gold in streaks as large as a big diaper-pin head, little pellets of gold along like fine shot, so as to leave a line of gold. * * * I took it for granted that that was rich ore."

And in his letter of May 7, 1867, to Garth, Exall says (*Record*, 266):

> "While at the La Abra I picked up two or three pieces of ore which was then being taken out. Made no selection. The evening before leaving the hacienda for this port I assayed the several pieces. The assay was *better* than previous assays of any ore on the patio, giving me $378 in silver and a large percentage in gold. * * * The labor from which this ore was taken is improving, and the vein widening ever since it was first started on."

From the foregoing two things are clear (1) that whatever may have been realized from the reduction of the ores, it was far in excess of the amount named by Mr. Chief Justice Nott; and (2) that the evidence does not so conclusively impeach the Umpire's allowance for this item as to warrant its annulment or reduction.

Inasmuch as the Umpire did not allow for the estimated value of the mines or prospective profits, but only for actual expenditures, and for the ore that had been extracted and abandoned by the Company, it was with reference to this last item that the charge of exaggeration was pressed upon him in the motion made by the Mexican government for a rehearing. In denying this motion the Umpire said:

> "In the case No. 489, '*La Abra Mining Company* v. *Mexico*,' the Mexican agent appeals to authorities as to the value of ores, who, he states, are at Philadel-

phia. Why were not the statements of these gentlemen—of whose existence the Umpire was not aware, and to whom he had not access—reduced to evidence and produced before the Commission?" (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 127.)

Now, it can be shown to a demonstration that when the Umpire allowed $100 per ton for 1,000 tons of ore on the patio—$100,000—he did not rely exclusively or mainly upon Exall's testimony, for Exall testified that the pile was worth $1,000,000; while Cole, an unimpeached witness, himself a mine owner, who had personal knowledge of the subject, testified (*Record*, 57):

"That he knows the fact that the said La Abra Company had taken out and left upon the ground, in April, 1868, large quantities of rich silver ore, as he believes, from 1,000 tons to 1,500 tons, and that nearly all of the richest and most valuable of the same were taken off by Mexicans, and carried away from said mines, after Superintendent Exall had been forced to abandon the same in March, or the early part of April, 1868.

"That deponent has frequently *seen* them packing off said ores from the works of said Company, in sacks upon mule backs, in March, April and May, 1868, and that they must have taken off largely more than $250,000 worth of the said ores, independent of, and above the cost of reducing the same to bullion.

"Deponent believes the said Company, at the time they abandoned the same, had out about 1,200 tons of said silver ores, which would have yielded said Company, in his opinion, not less than from $100 to $1,000 per ton of pure silver."

The learned Chief Justice says that Granger testified, on the 6th of October, 1871, "that the greater part of the ore taken out by the Company is still on the patio of the hacienda, and that it is good for nothing;" but that was more than three years after the abandonment, and,

of course, it was only the best of the ore that was carried away. It will be noticed that the Umpire adopted Cole's minimum valuation of $100 per ton, and fixed the quantity at 1,000 tons, although Jesus Torres and Francisco Acosta, witnesses for Mexico, estimated the quantity at "from 10,000 to 14,000 cargas"—1,500 to 2,000 tons. (*Record*, 137, 138.) These witnesses said that this was "heaped up and covered over with about three or four hundred cargas of real ore in the hacienda of Tayoltita."*

But this was not the only evidence before the Umpire. Charles Bouttier, a professional miner and chemist, testified that he was at Tayoltita in the winter of 1867–1868, and that, with a view of purchasing the Company's mines, "in connection with other gentlemen who wished to form a company to work them," he tested very thoroughly the "quality and supply of the ores of La Abra, La Luz, Rosario, and Talpa."

Mr. Bouttier continued (*Record*, 75):

> "The result of my examination of these mines was that I found La Abra almost an inexhaustible mine of rich ore, which, however, will require a large capital to work it properly, as it should, in my judgment, be tunnelled. * * * The ore I tested averaged more than that average ($600 per ton.) I also tested the other mines named in the same way, and the ores of the others tested beneficiated me at the rate or average of about $475 per ton."

This witness also mentions "the large piles of rich ore" which the Company "had taken out," and which he "*saw there*, piled up back of the hacienda."

This was not the testimony of "ignorant Mexican miners," to whom Mr. Chief Justice Nott refers, but of experts who testified from personal knowledge. The

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*On this statement, see Bartholow's testimony (*Record*, 169).

"ignorant Mexican miners" were examined for Mexico and not for the Company. Cole was a citizen of the United States, resident in Mexico, a ranchman and miner of large means and experience, and Bouttier was a Frenchman by birth who had lived for twenty years in the United States, and at the time he testified was a resident of Mazatlan, where, or elsewhere in Mexico, he had resided for "about sixteen years last past."

Nor should it be forgotten that there was a mass of testimony before the Umpire — testimony still unimpeached—to the effect that great quantities of the Company's ores where stolen. The Umpire might well conclude that if the ores had been worthless or so poor as the witnesses for Mexico asserted, the ore-piles would not have been plundered in that way. The Umpire had also before him the orders of the local magistrates, addressed to the Company's superintendent, to let the unemployed Mexican laborers work the mines—which, of course, they would not have desired to do if they had believed that the ores would not pay for working.

It is also to be observed that Exall was not in the service of the Company, and had no connection with it, or interest in its claim, when he testified on its behalf in 1869 and 1874. (*Record*, 33, Ans. to Ques. 17; *ib.*, 160, Ans. to Ques. 34.) If he testified falsely, and if it had been on his testimony that the two items in question were allowed by the Umpire, nevertheless they could not be disturbed in this proceeding, because the jurisdictional act does not allow the award to be impeached in whole or part, unless "obtained by fraud effectuated by means of false swearing, or other false and fraudulent practices *on the part of the said* * * * *Company*, or its *agents, attorneys*, or *assigns*."

But even if the Umpire's allowance for the ore, which was made upon the testimony of such witnesses as Cole

and Bouttier, who have not in any way been impeached, and against whom no charge of bribery or corruption has been made, could be shown to have been excessive, the fact would remain that on account of Mexico's improper and prolonged efforts to subvert the award in its entirety, the Company and its assigns have not only been put to an enormous expense in the defense of their rights since 1877, but they have been deprived of their share of the installments paid by Mexico since 1882—expenses and loss of interest far in excess of the whole amount of the allowance in question.

(*d*) Equity will not relieve against an award for mere excess of damages. The allowance must be so grossly unreasonable and so evidently unjust as to raise a presumption of corruption or partiality on the part of the arbitrator. It was to this settled principle that the Judiciary Committee of the Senate referred, when they said, refering to Mr. Evarts' report in this case:

> "It will be seen from this report, with respect to La Abra mining claim, the principal ground of complaint is exaggeration of damages, and upon that question *it does not appear that any fault whatever attaches to the Commission before whom it was examined, nor to the Referee by whom it was affirmed.*" (*Supra*, 22.)

The rule is stated as follows in Kerr on *Fraud and Mistake*, Bump's ed., 291, *note:*

> "An award estimating damages or the value of property will not be set aside in equity unless the estimate is so enormously disproportioned to the case proved as to strike every one that there must have been corruption and partiality." (*Rand* v. *Reddington*, 13 N. H., 72; *Bumpass* v. *Webb*, 4 Port., 65; *Beverly* v. *Reynolds*, Wythe, 105; *Van Cortlandt* v. *Underhill*, 2 Johns. Ch., 339.)

In the last-named case (*Van Cortlandt* v. *Underhill*, *supra*), Mr. Chancellor Kent discussed this question at great length and with the thoroughness and learning for which he was so justly distinguished.

He says (p. 358):

> "I come now to the real foundation of this controversy, and that is the sum at which the mill and its appurtenances have been valued. * * *
>
> "My impression from the proof is that the property here was considerably overvalued, and I have been induced to examine the case with more than ordinary attention to see if there was any well-established fact that would, upon sound principle, justify me in interfering with the award. But if I have been unable to discover any sufficient grounds it is then my indispensable duty to adhere to the settled doctrines of the court rather than make them bend to a case of individual hardship. * * *
>
> "If every award must be made conformable to what would have been the judgment of this court in the case it would render arbitrations useless and vexatious, and a source of great litigation, for it very rarely happens that both parties are satisfied.
>
> "The decision by arbitration is a decision of a tribunal of the parties' own choice and selection. * * * They (the courts) have only looked to see if the proceedings were honestly and fairly conducted, and if that appeared to be the case they have uniformly and universally refused to interfere with the judgments of the arbitrators."

The learned Chancellor then reviews the cases, commencing with *Greenhill* v. *Church* (3 Ch. Rep., 49), as early as 1635. He also refers to *Cavendish's Case* (1 Ch. Cas., 279), in which Lord *Nottingham* held that "if parties without the court refer their differences they choose their own Judges, and the court would not relieve against the award, unless for corruption, going beyond authority, or the like;" *Brown* v. *Brown*, A. D. 1683 (1 Vern., 157),

in which Lord Keeper *North*, although admitting that the amount awarded—which was denounced as "outrageous"—"was near the value of the estate for life," felt bound to dismiss the bill; *Earl v. Stocker* (2 Vern., 251; Hil., 1691), in which the court set aside an award on one of the excepted grounds of interest and corruption in the arbitrators. Other cases within reach of the exception were referred to, as that of *Pitt* v. *Dawbra*, where the arbitrators had promised to hear witnesses, and had made their award without having heard them; and the *Butcher of Croyden's Case*, in which the arbitrator was not indifferent between the parties.

> "In all these cases (says Chancellor Kent) the award was set aside on the ground of misconduct, partiality or corruption, and not on the ground of error or mistake; and in *Croyden's Case* the Lord Keeper declared that he did not proceed barely because the damages were excessive, though the award, as it is stated in 1 Vern., 157, was for £300, which was an enormous sum for that day, and was merely to repair, as the award expressed it, the honor of a man who was called a bankrupt knave."

After reviewing other cases and citing the decisions of Lord *Hardwicke*, Lord Chief Justice *Eyre*, and Lord *Eldon*, Chancellor Kent sums up as follows:

> "In finishing this review of the most material chancery decisions on awards, I think we may safely conclude that the law is as well settled on this as on any other subject whatever. The conclusiveness of the judgment of arbitrators has received the uniform sanction of the court for a series of ages. The rule is not now to be shaken or disturbed; it is founded in so much reason and public convenience as not to be confined merely to the Court of Chancery, but to have met with the general approbation of mankind."

It need not be said that all the reasons in favor of this

doctrine as affecting municipal awards apply with equal or greater force to awards made in settlement of international claims.

Chancellor Kent also reviews the American cases, citing *Parker* v. *Avery*, Kirby, 353, decided in Connecticut soon after the Revolution, in which it was declared by the court to be unprecedented there to go into the merits of an award, and that the reasonableness or unreasonableness of it did not affect its validity, so that there be no misbehavior or corruption in the arbitrators. He also cited an early case in South Carolina—*Mulder* v. *Cravat*, 2 Bay, 370—in which the judges all agreed that too easy an ear ought not to be lent to complaints against awards made by judges of the parties' own choosing, and who possess all the powers of courts of law and equity in the given case. He also said that the same rule had been repeatedly declared in the courts of Virginia, and that the reasons for setting aside an award, according to the cases there, must appear on the face of it, or there must be misbehavior in the arbitrators, or some palpable mistake, citing 1 Wash., 14, 158; 1 H. and Munf., 67; 2 H. and Munf., 408. In one of the late cases (2 Munf., 8), he observed that it was laid down by Judge Brooke that—

> "whether the value of the land was ascertained upon correct data can not now be questioned, unless misbehavior in the arbitrators, or some one of them, were proved, or a palpable mistake in the amount, and not in the manner of making up the award was shown."

The learned Chancellor then takes up the civil law, in which, he says, citing authorities, that the conclusiveness of an award is asserted as strongly as in any of the English decisions. After quoting from *Vinnius*, he says:

> "The case here stated is the very one we are considering. The parties choose arbitrators to fix the

price of the mill, and they must abide by the price declared, be it too high or too low, unless fraud can be shown. This award would be declared binding by Vinnius, sitting under the civil law; it must be equally so under the law of this country."

In *Burchell* v. *Marsh*, 13 How., 351, the same doctrine is expressed by this court, per Mr. Justice Grier, as follows:

"Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes it should receive every encouragement from courts of equity.

"If the award is within the submission and contains the honest decision of the arbitrators, after a fair and full hearing of the parties, a court of equity will not set it aside for error in fact or law. A contrary course would be a substitution of the judgment of the *Chancellor* in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. * * *

"The damages allowed for the alleged oppression of Burchell and the ruin of his business, may seem large to some, while others may think the sum of four or even five thousand dollars as no extravagant compensation for such injuries. *It may be admitted that on the facts appearing on the face of the record, this court could not have assessed damages to so large an amount nor have divided them so arbitrarily between the parties; but we can not say that the estimate of the arbitrators is so outrageous as of itself to constitute conclusive evidence of fraud or corruption.*"

Such, also, in principle, is the Law of Nations.

So Vattel, B. II, ch. XVIII, § 329:

"When once the contending parties have entered into articles of arbitration, they are bound to abide by the sentence of the arbitrators; they have engaged to do this; and the faith of treaties should be religiously observed."

He then continues, referring to a possible case in which the decision might be such as could never have been contemplated in the submission:

> "If, however, the arbitrators, by pronouncing a sentence evidently unjust and unreasonable, should forfeit the character with which they were invested, their judgment would deserve no attention; the parties had appealed to it only with a view to the decision of doubtful questions. Suppose a board of arbitrators should, by way of reparation for some offense, condemn a sovereign State to become subject to the State she has offended, will any man of sense assert that she is bound to submit to such decision?"

But even in such a case, he says:

> "If the injustice is of small consequence, it should be borne for the sake of peace; and if it is not absolutely evident, we ought to endure it, as an evil to which we have voluntarily exposed ourselves. *For if it were necessary that we should be convinced of the justice of a sentence before we would submit to it, it would be of very little use to appoint arbitrators.*"

But where the decision is clearly within the submission the parties must abide by the award, unless it is shown indubitably that the arbitrators have been corrupt or partial. On this point Vattel says (*ib*):

> "If, then, their sentence be confined within these precise bounds *the disputants must acquiesce in it. They can not say that it is manifestly unjust, since it is pronounced on a question which they have themselves rendered doubtful by the discordance of their claims*, and which has been referred as such to the decision of the arbitrators. Before they can pretend to evade such a sentence they should prove, by incontestable facts, that it was the offspring of corruption or flagrant partiality."

In his great work on *International Law*, Sir Robert Phillimore says (Vol. III, pp. 3, 4):

> "It should be observed that if any arbitrator be appointed, the terms of the appointment will of

course limit his authority, and if his award exceed or be inconsistent with those limits, it will be altogether null.

"Otherwise, the *jus inter gentes* is well expressed in the opinion of Ulpian, as it stands incorporated in the Roman Law:—'*Si se subjiciant alicui jurisdictioni, et consentiant, inter consentientes cujusvis judicis, qui tribunali præest, vel aliam jurisdictionem habet, est jurisdictio.*' * * *

"The sentence once given is binding upon the parties whose own act has created the jurisdiction over them. The extreme case may indeed be supposed, of a sentence bearing upon its face glaring partiality, and attended with circumstances of such evident injustice as to be null."

Rivier, in his recent work, "*Principes du Droit des Gens*" (Vol. II, p. 186), states the rule adopted by the Institute de Droit International (Art. 27), as follows:

"The arbitral sentence is void if the treaty is void, or if it is shown that any of the arbitrators exceeded his authority or was guilty of corruption, or if there was any material error."

The same rule has been upheld and applied by the diplomatic branch of this Government, which, while holding that an award might be reviewed by a new International Commission for fraud or collusion on the part of the arbitrators, maintained that this could not be done for exaggeration of damages. Thus Mr. Frelinghuysen, in his report to the President on the Caracas awards, said:

"An examination of the charges formulated by Venezuela against the remaining seven awards shows that they are objected to for various reasons, as, for instance, that the party agreed that his claim was not to be the subject of an international reclamation; that the contracts were not made by the lawful government of Venezuela; that there was no just foundation for the claim; *that the claims were grossly exaggerated;* that the claimant had not ex-

hausted all his remedies in the local courts, etc. *As all such defenses were open to Venezuela in the Commismission, the time for advancing them has now past.*" (Ex. Doc., No. 208, H. R., 47th Cong., 1st Sess., 4, 5.)

Mr. Evarts in his final report in this case, which was styled by the Mexican Minister an argument against any investigation whatever (*supra*, 57), referred to this rule when he said—

> "It is only in extreme cases, where the Commission is itself charged with corruption, or where it has clearly exceeded its powers * * * that prompt and cheerful acquiescence should not be rendered to its action. No such charge is here suggested."

And twelve years later, the Chairman of the Senate Committee on Foreign Relations, who has since been Secretary of State, said, in expressing his opposition to the jurisdictional act, and his dissent from the report in its favor (*Record*, 452):

> "Only this I can say, that I have always regarded the arbitration of this case as final and conclusive, not to be reopened, and that it is better in any aspect of the real facts in respect to the claim that *the award should be exactly carried out.* I have thought and still think that it is more important to give force and effect to an award solemnly made than to scratch over the ashes to find imperfections or insufficiency of proof upon which the award was founded. Unless convinced otherwise I will vote for insisting upon the award."

The distinguished Senator also said in his place in the Senate, February 2, 1892 (*Record*, 452, 453):

> "I believe it (La Abra) a case of exaggerated damages, but it seems to me the government of Mexico ought to have taken the pains to have established these facts, which they could have done. With all the power of a government there, and being per-

fectly familiar with the local matters, they should have made their defence before Sir Edward Thornton and thus avoided this controversy.

"As they did not do it, I believe it would be better for the public interests and better for an example of international arbitration that the award should stand and be executed in good faith."

III.

Neither the Court of Claims nor this Court has jurisdiction of this suit, because it requires a collateral inquiry to be made into the merits of an international award rendered by a tribunal of exclusive and final jurisdiction.

"The Mixed Commission (said Mr. Seward in his instructions to the United States Commissioner in the arbitration under the Convention of April 25, 1866, with Venezuela), when duly organized, will constitute *an international tribunal;* that is to say, *a Court of the highest order known to Public Law,* and will have complete jurisdiction of all questions of fact or of law which may come before it in virtue of the treaty between the two governments." (Mr. Seward to Mr. Talmage, November 15, 1867, Mis. Doc. No. 30, H. R., 45th Cong., 2d Sess., *Appendix,* p. 6.)

The Court of Claims said in the Meade case (2 Ct. Claims, 224):

"The Commission established by the Spanish treaty of 1819 (8 Stats., 252) was a *special tribunal* having exclusive jurisdiction of claims arising under the treaty, and *no other court* can correct its mistakes or revise its decisions." *

* This was a domestic board of Commissioners, whereas the United States and Mexico were represented in the Mixed Commission under the Convention of July 4, 1868, and the Umpire, Sir Edward Thornton, accepted that position with the consent of Her Britannic Majesty's Government.

With that definition this Court agreed (9 Wall., 725), saying—

> "That the decision of the Commissioners appointed by the United States dismissing the claim was final and conclusive, and bars a recovery on the merits in that court."

This Court, by Mr. Justice Story, had previously said, in respect to the same Commission (Comegys *v.* Vasse, 1 Pet., 193):

> "The object of the treaty was to invest the Commissioners with full power and authority to receive, examine, and decide upon the amount and validity of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, *is conclusive and final.* If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises *is not re-examinable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction.* A rejected claim can not be brought again under review in any judicial tribunal; *an amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of the language of the treaty.*"

In its opinion overruling the demurrer, the Court of Claims, by Mr. Justice Weldon, said (*Record*, 337):

> "Against the protestation of the party entitled to the residue of the award, the question of its fairness and integrity is *collaterally* submitted to this court, and we are called upon, in effect, *to pass judgment upon the binding force of the finding and award of a Mixed Commission sitting to decide upon international claims between independent and co-ordinate nations.*"

The complainant had seen this difficulty, and had therefore contended, as stated by the court in its opinion (*Record*, 340), that—

> "The law, bill, and decree, if in pursuance to the prayer, do not attack the integrity of the award, and

> that the award, as such, is above and beyond their powers and purposes; that the award, as a matter of law, is unaffected by the proceedings authorized by the act of our jurisdiction."

The conclusion of the court that the award was collaterally attacked should have led to a dismissal of the bill for want of jurisdiction.

There can be no doubt that the jurisdictional act did submit the question of the fairness and integrity of the award collaterally to the court; because the court could not examine and determine the question submitted by the act—*i. e.*, whether the award was obtained in whole or part "by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the Company, its agents, attorneys, or assigns,"—without retrying the case on the merits. At all events, this is what the court has done.

> "The proper mode of invoking equitable relief is by original bill in the nature of a bill of review." (STORY'S *Eq. Pl.*, § 426.)

But the court held that this was not an original bill in the nature of a bill of review, to set aside the award for fraud, and that the rules applicable to such a suit were not to be applied here, and therefore it could not escape the conclusion that the award was attacked collaterally by this anomalous proceeding.

Referring to the Throckmorton case, which, with others to the same effect, had been cited by the Company's counsel, the court said (*Record*, 354):

> "The rule of law announced in that case is but a repetition of the doctrine of many cases, and *were this an ordinary proceeding in review of the finding and judgment of a court, such cases would be applicable;* but the *trial* and *investigation* provided by the law of 1892 is *not subject to the rules applicable to proceedings in chancery to set aside a judgment or decree.*"

The original claim was docketed in the Commission as "*La Abra Silver Mining Company* v. *Mexico.*" This was in accordance with the purpose and provisions of the convention which was negotiated for the settlement of "all claims ON THE PART OF *corporations, companies, or private individuals, citizens of the United States.*"

If this proceeding had been a suit by Mexico against the Company to annul the award for fraud, the question of its fairness and integrity would have been raised in a direct proceeding—supposing that a court of the United States would have taken jurisdiction of an international matter of this sort. But as Congress, in the opinion of the Court of Claims, has determined that the preliminary question whether the new evidence on which Mexico relies could have been produced by the exercise of due diligence at the original trial, is not to be raised in this proceeding, and that it "is not subject to the rules applicable to proceedings in chancery to set aside a judgment or decree," it follows that the proceeding is anomalous, and hence it is that in the examination and decision of the one particular question which the act submits to the court, the award is inquired into collaterally. The suit is not *Mexico* v. *La Abra Company et al.*, to open the award and retry the claim, but *The United States* v. *La Abra Company et al.*, "to determine (in the words of the jurisdictional act) whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said * * * Company was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of *false swearing* or other false and fraudulent practices on the part of said * * * Company, or its agents, attorneys or assigns, and in case it be so determined to bar and foreclose all claims in law or equity on the part of said * * * Company," etc.

Now, in determining this particular question and making such a decree, the court found itself obliged to retry the original case. The court said (*Record*, 818):

> "Having decided that under the law of 1892 the court has jurisdiction * * * to inquire into the fairness and justice of the award, we now reach that part of the case when it is necessary for *us* to *determine* from the testimony, first, whether the respondent was compelled by threats or acts of the Mexican officials or people to abandon the mines, as stated in the memorial, on or about the 20th of March, 1868, and, if so, what was the reasonable value of the property so abandoned," etc.

And again (*Record*, 820):

> "The theory we have adopted is that the examination under the statute of 1892 properly embraces the inquiry as to *whether the Company was compelled to leave Mexico because of the acts of the people and the authorities;* and, if so, the value of the property abandoned and sacrificed."

That was the *whole case* before the Commissioners and Umpire.

The Court of Claims has retried that case, and while it has not decided that any particular testimony on which the United States Commissioner or the Umpire relied was perjured or false, but, on the contrary, has affirmed the genuineness of Mora's and Soto's orders and the credibility of Chavarria's testimony, it has shown as clearly as possible that it has not been impressed in the same way with the evidence as was the Umpire, and has come to a different conclusion from his on substantially the same proofs. This is how the court concluded when drawn into a consideration of the merits—as it says—"collaterally," but it said at an earlier stage, when defining its jurisdiction (*Record*, 817):

> "We are not sitting as a court of review to deter-

> mine whether, upon the proof offered and admitted, the award is to be sustained or justified by the weight of testimony, but whether it was procured by false testimony or fraudulent practice upon the part of the respondent. We are not to determine the question as to whether the Umpire found against the weight, or great weight of the evidence, but whether the award is the result of fraud and perjury."

The failure of the court to designate in its opinion or decree—just as Mr. Attorney-General failed to designate in his bill—any particular fraud with the precision and circumstance required by the law in such cases is discussed elsewhere, and is mentioned here merely to show that, as a result of this anomalous proceeding, instituted as a suit in equity, with an appeal to this court, a claim arising under the Law of Nations has been retried and an award of an International Commission, which inherently and by treaty is final and conclusive, has been called in question and divested of the verity which it imports—"collaterally." There can be no question about the fact, for the court that rendered the decree as the result of this retrial says, referring to the jurisdictional act, that the question of the fairness and integrity of the award "*is collaterally submitted to this court.*"

The legislature can not grant a new trial of a domestic case, because that is a judicial function; still less can it direct a court "to pass judgment upon the binding force of the award of a Mixed Commission" * * * "collaterally."

> "It is a general rule at common law that parties and privies to a judgment may not impeach it collaterally for fraud." (12 Am. & Eng. Ency. of Law, 147 S., and cases cited.)

In *Michaels* v. *Post*, 21 Wall., 398, this Court said:

> "Domestic judgments, under the rules of the com-

> mon law, could not be collaterally impeached, or called in question, if rendered in a court of competent jurisdiction (*Lord* v. *Chadbourne*, 42 Me., 429). It could only be done directly by writ of error, petition for new trial, or by bill in chancery." See, also, *Noble* v. *Union River Co.*, 147 U. S., 174.

The Court of Claims overruled the demurrer and assumed jurisdiction entirely upon certain expressions in *Boynton* v. *Blaine*, 139 U. S., 306. This was stated by Mr. Justice Weldon (*Record*, 351), as follows:

> "In the view which we now take of the decision in the case of *Boynton* v. *Blaine*, we eliminate from the consideration of this case all speculation upon the subject of whether the United States is a sovereign or a trustee; whether the Company has a vested right of property in the fund, or award, and whether the claim is in abeyance or in esse, and *place our conclusion as to the legality of the act of 1892 upon what is said in that case.*
>
> "The court, in the conclusion of the opinion, held, in substance, that so long as the political branch of the Government had not lost control of the fund, that the claimant, as between itself and the Government, was not in a position to insist on the conclusiveness of the award; that by the act of 1878 that control was expressly reserved, and that such control was to be kept until *a retrial* could be had in an international tribunal, if the two Governments so agreed, *or in a domestic tribunal if Congress so directed.*"

To this it may be said—(1) that the statement of the learned Chief Justice was OBITER, and (2) that the Court of Claims has misconstrued its meaning.

The learned Chief Justice, in delivering the opinion of this court in that case, stated precisely what it decided and the ground on which that decision was founded. A petition had been filed in the Supreme Court of the District of Columbia by an assignee of a portion of the

Weil award for *mandamus* directing the Secretary of State to pay him his share of the funds received from Mexico, which petition was dismissed by the court below, and an appeal was taken to this court. The petitioner relied upon the Act of Congress of June 18, 1878, and contended that the conditions on which payment in the Weil case was suspended, by section five of that act, had been decided in his favor, but the Secretary, in his answer, said—

> "that grave charges and representations impeaching the integrity of the evidence on which the award in the case of the said Weil was made have been brought to the notice of the Government in a way to command its earnest attention, and that it is *the desire of the President to have the said charges and representations investigated so soon as Congress shall have provided the means for doing so.*"

And furthermore—

> "That while the said charges and representations are pending the President of the United States hath concluded that payment of the money now demanded by the relator should be withheld, and that *the course thus taken by the President was in harmony with section 5 of the act of June 18, 1878.*" (*Boynton* v. *Blaine*, 139 U. S., 310, 311.)

Upon this fundamental issue, as to the effect of the act on which the petitioner relied, Mr. Chief Justice FULLER said (pp. 320, 321):

> "Payment of the Weil award had been withheld by the President after an investigation, but the case had not been retried and decided in a manner agreed upon by the United States and Mexico, nor had Congress otherwise directed. How, then, could Weil, or his assignee, the relator, *insist upon payment under the first section of the act in disregard of the limitation imposed by the fifth?* On what principle could it be held that the duty was imposed upon

> the Secretary *to pay an award by an act expressly providing that payment should not be made in a specified contingency, which had occurred?* What power had he to do the thing demanded in virtue of legistion which forbade it to be done?"

This then—whether the relator's petition for mandamus could be sustained on the Act of June 18, 1878—was the issue on which the case depended, and on which it was decided.* That the case decided nothing more than this, and that a different issue might have been presented to the court, the learned Chief Justice made clear, as follows:

> "The *political trust* with which every government is charged, as respects its own citizens, was not the ground of relator's contention, but he relied on the Act of 1878 as giving him the right to enforce the alleged obligation by judicial proceedings, and it was essential to the maintenance of his position that the record should bring him within its terms." (P. 321.)

Now, it is respectfully submitted that there is nothing in this decision to justify or support a grant of "full jurisdiction" by Congress to the Court of Claims to "finally adjudge" the particular question submitted to it by the act, or to pass judgment upon the fairness and integrity of the award collaterally.

The learned Chief Justice does indeed speak of a *re-*

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* This decision is not at all inconsistent with the decision of this court in *Frelinghuysen* v. *Key*, that the fifth section of that act, from beginning to end, was merely a *request* addressed to the President, without which his constitutional power in the premises would have been as complete as with it. The appellants admit that the Secretary of State can not be compelled to make distribution if the President authorizes the answer that was made for him in *Boynton* v. *Blaine*; *i. e.*, that he desires "to have the said charges and representations investigated so soon as Congress shall have provided the means for doing so"—with a view, of course, to a negotiation with Mexico for a retrial, if in his opinion the honor of the United States or the principles of public law may so require.

trial in a domestic tribunal, if so directed by Congress, but he also says, referring to the investigation which Congress requested the President to make before making payment in the Weil and La Abra cases, that—

> "This inquiry might have resulted in reopening the awards as between the two nations, or in *such* re-examination in a domestic forum as would demonstrate whether the honor of the United States required a different disposition of the particular amounts in question."

But this would be for the information, and not for the control, of the Executive.

In his statement of the case (p. 315), the learned Chief Justice refers to the suggestion of Mr. Evarts in his first report, that—

> "the Executive had not the means of instituting and pursuing methods of investigation which could coerce the production of evidence or compel the attendance of witnesses, and the authority for *such* an investigation must proceed from Congress."

But Mr. Evarts did not mean, and Mr. Chief Justice did not say, that the political or diplomatic issue—"whether the honor of the United States required a different disposition of the amounts in question"—should be "finally adjudged" by the Court of Claims, nor that the final judgment of a special tribunal sitting under the Law of Nations should be set aside and the Company and its assigns be forever barred and foreclosed of all claims and demands upon the amount awarded, in collateral proceedings by any municipal court whatsoever.

The only particular method of "such re-examination" indicated in the opinion (p. 317) is the one suggested by Mr. Secretary Bayard, under the 12th section of the Tucker Act. This, he said, would be "a *proper judicial*

investigation of the claims in question." The findings of the court under this section would have been reported to the Department of State, for its information, and, as decided by this Court (*in re* Sanborn, 148 U. S., 222), *would not have operated as a final judgment.*

The opinion in *Boynton* v. *Blaine* affirms the opinion in *Frelinghuysen* v. *Key,* and the latter asserts in the most unmistakable terms that the final decision of the question involved is with the President, under the Constitution, and that any interference with him by Congress in the discharge of this constitutional duty would be an encroachment. Congress might have furnished him with the means of making a further investigation in 1880, if it had chosen, but it can not take the case out of his hands and determine the question involved and control his discretion by a final decree.*

IV.

The appellate jurisdiction of this court, if it exists, involves and requires a review of the facts.

It is true that the jurisdictional act of 1892 permits an appeal to this court from a final decree of the Court of Claims "under the rules of practice which govern appeals from said court;" but we contend that this language does not refer to the rules of practice prescribed by this Court applicable to cases arising under the general jurisdiction of the Court of Claims. Those rules, adopted at the December Term, 1865, expressly

*The Court of Claims asserts full jurisdiction over the funds in the custody of the Secretary of State, as well as the question of fraud in obtaining the award. The opinion mentions "the sum of $403,030.08" as "now the amount *subject to the decree of this litigation,*" and says that "the statute contemplates that the effect of the decree be confined to the money on hand, and to that extent it partakes of the character of a proceeding *in rem.*" (*Record,* 841.)

relate to "cases decided in the Court of Claims in which by *the* act of Congress such appeals are allowable." *The* act here referred to is the Act of March 3, 1863 (12 Stats., 765), and not *an* act of Congress in a special case. (McClure *v.* United States, 115 U. S., 145.)

There are also rules of practice laid down in the *decisions* of this Court. Congress must be presumed to have had knowledge of these rules, as enunciated in *Harvey* v. *United States*, 105 U. S., 671, and *United States* v. *Old Settlers*, 148 U. S., 427, in which it was held that in a suit in equity this court must review the facts as well as the law.

Rule V, regulating appeals from the Court of Claims, requires "each party" to submit requests for the finding of facts by the Court of Claims, but in this suit neither the Government nor the appellant made any such requests. Neither considered the rule applicable and the requests, in view of the opinion of the court (*infra*, 101), would have been futile.

It is idle to deny that this was meant to be a proceeding in equity. The Government proceeded, as is required in equity cases, by filing a bill, and this bill is entitled by Mr. Attorney General "in equity." The act conferred on the court the right to make interlocutory and *final decrees*, and to enforce them by *injunction*—powers only conferred upon a court in the exercise of equity jurisdiction. Moreover, the act authorizes, and the bill prays, the court to *bar and foreclose* all claim of La Abra Company, a power unknown to a court of law. The bill also seeks, and the answer makes, *discovery*.

In the opinion overruling the demurrer Mr. Justice Weldon said:

> "Against the protestation of the party entitled to the residue of the award, the question of its fairness and integrity is collaterally submitted to this court,

and we are called upon, in effect, *to pass judgment upon the binding force of the finding and award of a Mixed Commission sitting to decide upon international claims between independent and co-ordinate nations.*" (*Record*, 337.)

If an award of such a tribunal could be reviewed in a domestic court it could only be by a suit in equity.

Further on the learned Justice referred to the jurisdictional act, which he said—

> "from its declared purpose subserves a great public interest in relieving the Executive branch of the Government in the discharge of a very important duty toward the Republic of Mexico and *the disposition of a trust recognized by the act of 1892 in a citizen of the United States.*" (*Record*, 339.)

And again:

> "Congress, by the act of 1892, *declared a trust* in the remaining funds for the purpose of determining the question of fraud urged by the Republic of Mexico, and conferred on this and the Supreme Court the judicial power of deciding that question." (*Record*, 352.)

Equity takes notice of and protects especially trusts and equitable estates.

> "Trusts are the original creatures of the court of chancery * * * and to remedy breaches of trust was the first reason of the constitution of that court." (Lord Chief Baron Gilbert, *Forum Romanum* (Tyler's ed.), 253; Story's *Eq. Juris.*, 13th ed., sec. 60, p. 58; 2 Spence's *Juris. Court of Chancery*, 25.)

Another ground of equitable jurisdiction, suggested by Mr. Attorney General in his bill, was stated by the court, as follows (*Record*, 352):

> "The Act of 1892 having recognized a claim on the part of the Company, *equitable* in its character,

> and Mexico, in subordination to the judgment of the Commission, having questioned the justice of the claim, the Government finds itself in the condition of a *trustee*, having in its possession money to which it lays no claim as property, files this bill in the form of a bill of *interpleader*,* or to *quiet title*, to have judicially determined its duty with reference to the money as property."

Asserting the equitable nature of its jurisdiction under the act, the court sums up as follows (*Record*, 356):

> "The directions of the statute as to the character of the decree seem to be without doubt, and as the court in the trial of the cause is *in the exercise of* EQUITY *powers*, it would find no difficulty in entering such a decree as will carry out the purpose of the statute."

These citations are made to show that in the opinion of the court the jurisdiction conferred upon it by the act was unmistakably equitable. But the appellants do not concede that the "trust" under which the President holds the funds in question arises from the jurisdictional act, or the Act of 1878, but from the terms of the treaty under which the claim of the Company was submitted for final determination to the Mixed Commission. Indeed, the "trust" has its root still deeper, to wit, in the Company's ownership or right of property in the claim for which the award was rendered, and which is now merged in that final international judgment.

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*This can not be compared to a case of interpleader, for in such a case the stakeholder must be indifferent, whereas in this case the stakeholder alleges in the bill that the claimants obtained the award by fraud; nor does the court dispose of the fund as in a case of interpleader, for the act itself does that, or rather, it undertakes to authorize the President to do it, in conformity with the decision of the Court of Claims or of this Court on appeal. Nor would an interpleader lie where one of the parties claiming the fund had obtained a judgment in his favor. The judgment could not be impeached in that way.

In announcing its conclusion on this point and justifying itself for omitting its usual findings of fact (which had not been requested in this case by either party), the court said, in its final opinion on the merits (*Record*, 838, 839):

> "This being a proceeding *in equity*, this court is not called upon to settle the facts by the finding of ultimate facts for the consideration of the Supreme Court, but the whole record is transmitted to that court, and the case is to be determined in the Supreme Court upon the law as it shall be adjudged and upon the facts as they shall be found by the decision of the Supreme Court.
>
> "That would be so *in a case of this kind* arising under the ordinary jurisdiction of the Court of Claims, but it is especially true from the *provisions of the statute* giving us the special jurisdiction to determine the issues of this proceeding. The statute provides for a *decree* and not for a money judgment."

Then, citing the case of *Harvey* v. *United States* (*supra*), the court concludes as follows:

> "All the testimony being before the Supreme Court for the purpose of settling ultimate facts from such testimony, we have confined the limits of this opinion to questions of law and the determination of the ultimate fact, which is, whether the Company was compelled to abandon its mines because of the acts of the people of Mexico and the Mexican authorities."

Judged by all the tests recognized by the authorities, it is clear that Congress intended that the suit which it directed the Attorney General to bring should be—as he has framed and entitled the bill—a suit "in equity.' (1 *Story Eq.*, § 25 *et seq.*; 2 *Id.*, § 960 *et seq.*; 4 Minor Inst., 333.)

If it has any resemblance, as claimed by complainant, to an interpleader, this, too, forms one of the ordinary

subjects of equity jurisdiction. (Mitford Eq. Pl., 104, 125.)

> "Congress has always used these words ("appeal" and "writ of error") with a clear understanding of what is meant by them, namely, that by a writ of error only questions of law are brought up for review, as in actions at common law, while by an appeal, except when specially provided otherwise, the entire case on both law and facts is to be reconsidered." (*Cunningham* v. *Neagle*, 135 U. S., 1, 42; 2 Foster, Fed. Prac., 2d ed., 964.)

To the same effect is Mr. Spear, in his work on The Law of the Federal Judiciary (pp. 259, 260), where he gives a history of the methods of appeal to this Court, commencing with the distinction taken in the Constitution between law and equity, and describing the practice of this Court from the beginning, with references to the various statutes and decisions on the subject.

In delivering the opinion of the court in *United States* v. *Old Settlers* (*supra*), Mr. Chief Justice Fuller, referring to *Harvey* v. *United States*, 105 U. S., 671, 691, said (p. 464):

> "On appeal to this court from a decree rendered under this act [for Harvey's relief] it was contended on the part of the United States that the appeal could not be heard, because there was not in the record 'any finding by the Court of Claims of the facts in the case, in the nature of a special verdict, with a separate statement of the conclusions of law upon such facts.' But this court held, through Mr Justice Blatchford, that 'the rule in regard to findings of fact has no reference to a case like the present, of equity jurisdiction conferred in a special case by a special act; and in such a case, where an appeal lies and is taken under section 707 of the Revised Statutes, this court must review the facts and the law as in other cases in equity, appealed from other courts.'"

The learned Chief Justice also said (p. 465):

> "We regard the language of the act of Congress as manifestly used with the intention that equity powers should be exercised in the disposition of the case. It was upon this view that we directed the *certiorari* to issue, and in arriving at our conclusions * * * we have considered and determined the case for ourselves upon an examination of the entire evidence."

There can be no doubt that if this Court entertains the appeal in this proceeding, the facts as well as the law must be reviewed.

V.

If this appeal is dismissed for want of jurisdiction the decree of the Court of Claims will be null and void, and unavailable for any purpose whatever.

It was argued by the learned counsel for the complainant on the respondent's demurrer below that if the Court of Claims should hold that it could not constitutionally render a decree in the terms of the jurisdictional act it might nevertheless proceed, by virtue of the act, to make findings of fact for the information and guidance of the President. On this point the learned counsel remarked (29 Ct. Clms., 466):

> "But even if the act of 1892 does not vest judicial power in the courts, the Court of Claims may still proceed under it. The act requires the Court of Claims to find certain facts. This Congress may do for its own information and action, or for that of the President. If the decree (of injunction against defendants) which the act directs to be entered upon a finding for the plaintiff can not be constitu-

tionally rendered, that does not make the whole act unconstitutional and void. The provisions for the injunction and for the appeal are separable from the rest of the act, and the Secretary of State *may* distribute the money or the President *may* return it to Mexico, *accordingly* as the court find for plaintiff or defendants on the question of fraud."

Referring to this suggestion, the court said, in overruling La Abra Company's demurrer:

"Inasmuch as this opinion holds that the statute is constitutional in its entire scope, it is not necessary to discuss the question as to whether it is good to a certain extent, and would authorize the finding upon the part of the court as to the fact whether a fraud was committed in procuring the award from and through the Commission." (*Record*, 355.)

But where Congress attempts to invest an inferior court with judicial power in the sense of the Constitution, and it is held by the higher court that the act is unconstitutional, the decree below is utterly void, and the judges can take no action whatever as commissioners or extra-judicially in the premises. And where a tribunal is authorized by legislative act to adjudicate individual rights, subject to an appeal to a higher court, and it is judicially determined that for any reason the appeal can not be entertained, the decree below can have no force or effect whatever for any purpose, and it is as if the act itself had never been passed. (*Mayor of Nashville* v. *Cooper*, 6 Wall., 250.) In such a case it must be presumed that the legislature would not have passed the act in question without the right of appeal. But in the case at bar the presumption is unnecessary, for the result of the debate in the Senate on the amendment to strike out the third section (*supra*, pp. 26, 27) shows that it was regarded as an essential part of the act.

"While it was conceded that Congress might confer

upon that court (the Court of Claims) extra-judicial powers, yet the court was of opinion that *this could not be held to have been done by the act authorizing the institution of this suit, since it is therein provided that whatever judgment might be rendered, whether for the complainants or defendants, might be appealed to the Supreme Court*, whose jurisdiction, as defined by the Constitution, is strictly judicial, and could neither be enlarged nor diminished by legislative authority." (Thayer, Cases on Const. Law, Part 12, p. 191, *n.*, citing *Gordon* v. *United States*, 2 Wall., 561; Taney, C. J., 117 U. S., 697, App.; *In re Sanborn*, 148 U. S., 222; Fuller, C. J. (for the Court), in *United States* v. *Old Settlers*, 148 U. S., 466.)

The rule is that the proceedings of an inferior tribunal, acting under an unconstitutional law, are void and not merely erroneous. *Ex parte Siebold*, 100 U. S., 376, 377, in which this court, by Mr. Justice Bradley, said:

"An unconstitutional law is void and no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and can not be a legal cause of imprisonment."

In a note to *United States* v. *Ferreira*, 13 How., 52–54, by Mr. Chief Justice Taney, inserted by order of the court, he gives the decision of this court in the unreported case of *United States* v. *Yale Todd*, because (he says)—

"It shows the opinion of the court upon a question which was left in doubt by the opinions of the different judges, stated in the note to Hayburn's case. And as the subject is one of much interest, and concerns the nature and extent of judicial power, the substance of the decision in Yale Todd's case is inserted here, *in order that it may not be overlooked, if similar questions should hereafter arise.*"

Grouping the two cases of Hayburn and Todd, the learned Chief Justice stated the results, as follows:

> "1. That the power proposed to be conferred on the Circuit Courts of the United States by the Act of 1792 was not judicial power within the meaning of the Constitution, and was, therefore, unconstitutional, and could not lawfully be exercised by the courts.
>
> "2. That as the act of Congress *intended to confer the power on the courts as a judicial function, it could not be construed as an authority to the judges comprising the court to exercise the power out of court in the character of commissioners.*
>
> "3. That money paid under a certificate from persons not authorized by law to give it (*i. e.*, the judges who had acted as commissioners) might be recovered back by the United States."

Thus it appears that the action of judges taken as commissioners, under an act of Congress "intended to confer the power on the court as a judicial function," is destitute of any legal effect whatever and is absolutely null and void.

Substantially the same account of the decision in these two cases and of the proceedings that led to them was given by Mr. Chief Justice Marshall in the famous case of *Marbury* v. *Madison*, 1 Cr., 171, 172, nearly half a century earlier.

VI.

The Court of Claims erred in not dismissing the bill when it found as matter of fact that the Mexican Government, by the exercise of the same diligence which it exercised after the adjournment of the Commission, could have obtained the so-called newly-discovered evidence, and used it while the claim was pending before the Commission.

On this point the Court of Claims said (*Record*, 841):

> "At the time the Secretary of State made the order of distribution Mexico had exercised the diligence which resulted in the procurement of the books of the Company, *and which might have been procured for use before the Joint Commission by the exercise of like diligence.*"

There can be no doubt that this is so. It appears from the evidence that when Exall abandoned the Company's mines and works at Tayoltita he left the Company's books of account and papers at the hacienda, and that they were never outside of Mexican jurisdiction from that time (late in February or early in March, 1868), until they were sent by Granger to Gaona in December, 1877, and January, 1878 (*Record*, 576, 577), and a small selection of the mass was forwarded to the Mexican Legation at Washington to be used in Mexico's appeal, through General Slaughter, from the State Department to Congress.

Granger was examined as a witness on six different occasions while the Claims Commission was in session—twice for the Company, May 14 and May 23, 1870 (*Record*, pp. 46–51; 64, 65), and four times for the Mexican government, August 23, 1871; October 6, 1871; July 23,

1872; and July 25, 1872. (*Record*, 111–113; 119, 120; 128, 129, 130.)

On his first examination he produced five documents, marked Exhibits V, W, X, Y, and Z (*Record*, 54), as to the last of which he said (*ib.*, 47):

> "A letter was received by Colonel De Lagnel, superintendent of said Company, from Colonel Valdespino, of the Republican Army of Mexico, *which came into my possession as clerk of the Company, and which letter has never since its receipt passed out of my possession;* and I now present the same to the counsel, marked 'Exhibit Z.'"

As to Exhibit X, he said (*ib.*, 49):

> "I remember the order very well, as I received it as *clerk of the Company*, and, after showing it to the superintendent, Mr. Exall, I filed it away with some other papers of the kind, and subsequently turned it over, together with two or three others from Judge Guadalupe Soto, to the attorney of said La Abra Company."

He also said (*ib.*, 50) that the hacienda had "long since been sacked of books, receipts, invoices, and other papers."

This testimony, which was taken May 14, 1870, while the Commission was in session, and *five years before its decision in this case*, put the Mexican authorities upon inquiry as to the Company's records, and pointed the way to their immediate discovery. Indeed, it was from this same man that the Mexican government, some eight years subsequently, obtained the Company's books and papers, and submitted a small selected portion of them, as "newly-discovered evidence," to our Government.

But although Granger was examined on four different occasions by the Mexican authorities subsequent to his examination for the Company, and while the Claims Commission was in session, and the testimony which he

had given for the Company at Mazatlan in May, 1870, was well known to the Mexican authorities in Washington, where the Commission sat, and in Mexico, where most of the testimony was taken, not a single question was put to him touching the Company's books and papers. The subsequent conduct of the Mexican officials in regard to these records (*supra*, 12–15) shows that they did not want to have them produced until the Commission had adjourned and a selection from them could be made and used as a means for attacking the award and recovering the whole or part of any amount that might be awarded.

But furthermore, one of the most important papers in "the newly-discovered evidence," *i. e.*, Exall's "autograph letter" of February 26, 1868, to Granger, putting him in charge of the Company's property,* was translated into Spanish by Sundell for Granger's use at San Dimas "a few days after Exall left"—that is, late in February or early in March, 1868—(*Record*, 542, answer to cross-question 10), and a judicial translation of the same document was made in the court of first instance at that place, upon Granger's petition, September 27, 1873. (*Ib.*, 300, 301.)

It was in this same court at San Dimas that so much of Mexico's defensive testimony was taken, and in which Granger himself had been four times examined as a witness for the Mexican government in opposition to the Company's claim. The Claims Commission was then in session, and no action was taken by the Commissioners upon the Company's claim until May, 1875—more than eighteen months subsequent to the aforesaid translation of Exall's letter—when they rendered conflicting opinions, and the case went to the Umpire.

* For Exall's explanation of that letter, see his affidavit of May 1, 1878. (*Record*, 670.)

This famous letter showed on its face that it had been subjected to moisture and pressure, thus suggesting a press-copy book, and the book itself which had been in Granger's possession since March, 1868, was *seen by Sundell in Granger's house at San Dimas several years after Exall's departure.* (*Record*, p. 538, cross-questions 39, 43; also p. 544, answers 39–43.) That Sundell had seen both the "autograph letter" and the press-copy book long prior to the Commissioners' disagreement and the Umpire's decision in this case, appears from his answer to the 55th cross-question (*Record*, 545), in which he says that he "never saw or heard of any books, letters, or papers belonging to the Company's records, *other* than the letter-press copy book and the letter of February 26, 1868, from Exall to Granger during the first five years of Exall's departure from Tayoltita." He therefore saw the book and the letter between March, 1868, and March, 1873. But we can fix the time when he saw the book more precisely. He tells us that he returned to San Dimas in October, 1871 (*Record*, 544, 546), while Granger was still a "resident of that place." (*Record*, 119.) It must have been about this time that Sundell saw the book, for Granger subsequently moved from San Dimas and was living at San Vicente in July, 1872. (*Record*, 125.) From March, 1868, to October, 1871, would be "several years after Exall left," and it is to be remembered that the Umpire's award in this case was not rendered till December 27, 1875.

Sundell and Granger were always on friendly terms. (*Record*, 543, Ans. 21.) At that time (October, 1871), when Sundell returned to San Dimas, Granger was living with Cecilia Jimenez, the stepdaughter of one of the local Mexican magistrates, Gaudalupe Soto (*Record*, 543, Ans. 28; 559, Ans. 21), and had a month or two previously changed sides as a witness, and given testimony

in court at San Dimas on behalf of the Mexican government. (*Record*, 111–113.) Sundell seems also to have been on friendly terms with the Mexican authorities, but they never took his testimony until August 9, 1877, although, with the exception of a short absence in 1872, he had been living continuously at San Dimas since October, 1871. And it was through Granger and in consultation with him that he was examined *ex parte* at Mazatlan, nearly two years after the Umpire's award had been rendered. (*Record*, 545, Ans. 50.) But, even then, although he had translated the "autograph letter" twice—the first time as early as March, 1868—no question was asked him about the letter-book or other records of the Company, until he was examined in this suit, October 2, 1894, when it appeared that he had seen the book in Granger's house at San Dimas, and Granger had told him that it was the Company's letter-book, while the Commission was in session, more than twenty years previously. Nor was a single question touching the Company's books and papers put to Granger in any of his four examinations as a witness for Mexico, although he had produced several documents in his testimony for the Company, and it was known to the authorities and the whole community that he had been employed as the Company's bookkeeper, and had remained at the Company's hacienda with Soto, for a short time, at least, after Exall's departure. Thus, for their own purposes, the Mexican authorities deliberately refrained from any attempt to find or produce the records of the Company which had been left in Mexican territory by the Company's superintendent and were, in part at least, in possession of a friendly witness, and continually within reach of the process of their courts until delivered, as aforesaid, in December, 1877, and January, 1878, by this same Granger to the Mexican district attorney, Gaona.

The Court of Claims was unanimous in its conclusion that the Mexican government could have produced the so-called newly-discovered evidence by the use of due diligence at the original trial, as appears from the opinion of the majority of the judges already cited (*supra*, 107), and the following, on that particular point, from the dissenting opinion of the learned Chief Justice (*Record*, 847, 848):

> "On the 14th day of May, 1870, Granger, as a witness for the Company, produced before the United States commercial agent at Mazatlan the five orders from Mexican civil and military officers which constituted the vital evidence of the Company's case in the hearing before the International Commission. These papers necessarily came from the office of the Company, and were a part of the mass of papers left in Granger's possession by Exall, and of which he was thenceforth the only custodian.* The Mexican government was thereby informed that papers of the Company existed, and that there was a person exercising a power of custody over them, and that that person was a resident within the territory of Mexico. This testimony, however, was *ex parte*. The Mexican government had no opportunity to cross-examine, and if the case had stopped at that point, would be free from the imputation of laches or neglect.
>
> "But fifteen months afterwards, August 23, 1871, Granger, who had twice testified for the Company, reversed his policy and his testimony, and became a witness for the government of Mexico. On the 6th of October, 1871, he was a second time called as a witness by the Mexican government. On the 23d of July, 1872, he for the third time testified for the government, and on the 25th of July he gave his testimony for the fourth time. In this last deposi-

* The local Mexican magistrate, Soto, whose stepdaughter, Cecilia, lived with Granger, took possession of the Company's hacienda, and resided there, after Exall's departure, for several years. (*Record*, 52, answer 4; 165, answer 17; 185, near foot of the page.)

> tion, in answer to the question, 'What position or employment did you have in the mining establishment of Abra?' he replied, 'At first I was a dependent or clerk; afterwards, when the superintendent—Carlos H. Exall—left, I remained in charge as his representative.' Therefore, before the case was submitted to the International Commission, *it was apparent upon its record that papers and documents of the Company existed in Mexico, and that they were in the hands of a friendly witness.*" *

But although the court found unanimously that Mexico could have obtained "the newly-discovered evidence" in time to submit it to the Claims Commission by the use of the same diligence as was exercised after the Commission had adjourned, nevertheless it did not dismiss the bill, because of opinion that Congress had relieved the Mexican Government from liability for its laches in the presentation of its original defense. On this point Mr. Justice Weldon says (*Record*, 818):

> "The question of diligence upon the part of Mexico, is not, as we conceive, before this court; that question was passed upon by Congress in the passage of the law giving us jurisdiction to determine the controversy on the questions of fact, subject to the rules of evidence applicable to the character of the inquiry arising upon the record."

We submit, with all respect, that the court was mistaken. The jurisdictional act, section 2 (*Record*, 329), directs the court "in *all* respects to proceed in said cause *according to law* and the rules of said court, so far as the same are applicable." The qualification—"so far as the same are applicable"—must refer to the rules of the court and not to the law of the land. A case to which, by act of Congress, the law was not to be applied, or a material

* The Senate was informed that Granger had never testified at all before the Commission (*supra*, 13, *note*).

part of which had been decided by Congress itself, would not be justiciable.

The legal or judicial character of this question of due diligence is admitted by the court in its opinion on the merits (*Record*, 818), where, in addition to the remark already quoted, Mr. Justice Weldon said:

> "The decision of the court on the demurrer determined the sufficiency of the bill, and, as we have said, CONGRESS in the passage of the law, *determined* the LEGAL QUESTION as to whether there should be a re-examination of the claim and a retrial of the cause."

The court also held (*Record*, 814) that in the trial of this cause it was "in the exercise of equity powers." Now, the case must either be at law or equity to come within the judicial power of the United States or the jurisdiction of this court as defined in the Constitution. If it were at law, the award, being a judgment of an international court of final and exclusive jurisdiction, could be set up, with the solemn covenants of the treaty, in bar. If Mexico were the nominal as well as the real complainant, and if her suit were brought, as she proposed nearly twenty years ago to bring it, in the courts of the United States by a bill of review for the annulment of the award on the ground of newly-discovered evidence of fraud, the court would not have opened the award and allowed a rehearing—even if it decided it had jurisdiction—until the complainant had proved to its satisfaction two things, (1) that the new matter could not have been obtained by due diligence during the original trial; and (2) that it was not merely cumulative upon an issue tried or triable before, but proved *prima facie* such fraud—extrinsic and collateral to the original proceedings—as would entitle the complainant to equitable relief.* The defend-

*See the authorities on this point (*infra*, pp. 131–134).

ants are surely entitled now and here to the same protection as the law of the land would have afforded to them if they had been sued as proposed by the Mexican government. And it is incredible that Congress would undertake to confer "full jurisdiction" in equity upon the court and order it "in all respects to proceed in said cause *according to law*," while intending that a fundamental principle of equity jurisprudence should not be applied in the suit. Equity can not be emasculated by Congress in that way. A suit in equity must be conducted according to the established principles of equity, one of which is that equity will not relieve from laches or neglect in presenting matters of defense available by due diligence at the original trial.

It can be shown from the history of the act—if it is obscure or ambiguous—that it was not the intention of Congress to decide beforehand and withdraw from the jurisdiction of the Court of Claims and this Court the question whether the Mexican government could or could not have obtained the so-called newly-discovered evidence in time for the original trial. That is a judicial question, and an essential part of the case, which it can not be presumed that the legislative branch of the Government intended to decide. It was the intention of the Senate subcommittee of investigation to separate the evidence into two parts—one that was new in the legal sense, and one that had been or could have been submitted to the Joint Commission. On that point the learned chairman (Senator Morgan) said (*Record*, 749):

> "When we come to consider this case and report it to the general committee, as I suppose the general committee will also do when they come to consider and report it to the Senate, we will be compelled, *of course*, to separate between those portions of the evidence which are new and those which were before the arbitrators at the time this claim was considered,

> and *we will be compelled to ascertain how far Mexico was delinquent in not presenting this evidence in defense of the claim, and whether thereby she has not forfeited her right to have a reinvestigation.* But we can not anticipate, at this stage of the inquiry, how much of this evidence will be new and how much will be of a character that Mexico had and used, or *could have used if she had been sufficiently diligent in the pursuit of her rights.*"

But no such separation was made, or attempted, for the investigation was continued till the eve of adjournment, and an important part of the testimony was not printed until the day after the majority report was presented to the Senate. (Report 2705, Part 2, Views of Minority, Sen., 50th Cong., 2d Sess., p. 1.) The Committee printed the whole of the testimony taken in the investigation, although much of it consisted of a re-examination of witnesses whose testimony had been before the Commission, or who could have been examined by the Mexican government while the Commission was in session. Congress deliberately left the question of Mexico's diligence to the court, and required it " in *all* respects to proceed in the said cause *according to law.*"

Since the Act of December 28, 1892, was passed, the Government in this suit has proved by Sundell that he saw the letter-book, which is the most important part of the new evidence, in Granger's possession while the Commission was in session, and that he had translated Exall's letter of February 26, 1868, to Granger, on which such stress has been laid by Mexico, a few days after Exall left Tayoltita; *i. e.*, some time in March, 1868—*two years before the Company's claim was presented to the Commission.* (*Supra*, 109.)

The fact that an appeal is given to the Supreme Court shows that it was not intended by Congress to decide itself

or withdraw from judicial decision any judicial question properly arising in the suit, or to deprive the Company and the other defendants of any defense available in such a proceeding. The laws must be the same for all, and Congress can not deprive any person of any legal right by compelling him to become defendant in a suit in which he is precluded from making any proper defense.

As already observed, such a case would not be justiciable. So it was held, in substance, by the Court of Claims in *The Western Cherokee Indians* v. *The United States* (27 Ct. Claims, 1), in which it was said:

> "Congress can confer upon this court powers not strictly judicial, such as those of a *quasi* international tribunal, but *when its judgment may be reviewed in the Supreme Court*, its decision must be confined to *the legal rights of the parties.*"

When relief is sought in equity from a final decree, for fraud, upon new matter discovered since the decree was signed and enrolled, permission must first be obtained from the court, and that permission will not be granted unless it is shown to the satisfaction of the court that the new matter could not with due diligence have been produced at the original trial.

Mexico can not come into this forum in the name of the United States, and the Company can not be dragged in here, by virtue of an act of Congress which relieves the Government from a legal obligation and deprives the Company of a legal right proper and essential to the judicial nature of the proceedings.

This was admitted by the complainant below, for in the argument on the demurrer the Government's learned counsel said (29 Ct. Clms., 467):

> "It is for the *Court*, applying the charges of the bill (and the evidence appended as Exhibit B) to the claim as it stood before the Commission, to say

whether a *prima facie* case is or is not presented to proceed with the inquiry into the facts as directed by the act of 1892."

And one of the allegations of Mr. Attorney General's "Amended Bill in Equity"—an allegation which that learned officer would never have made if he had imagined that Congress had already decided the question and withdrawn it from the jurisdiction of the court—reads as follows (*Record*, 7):

> "That the said Republic of Mexico at various times exhibited and filed certain proofs in reply thereto, and *all the evidence* which said Republic of Mexico could by the use of the *utmost diligence* obtain within the time allowed by the rules adopted by the said Commissioners for obtaining proof against said claim."

The following denial of this allegation was made in the Company's answer (*Record*, 426, 427):

> "This defendant * * * denies the allegation * * * that the Mexican government filed all the evidence which, by the use of the utmost diligence, it could obtain within the time allowed by the rules adopted by the said Commissioners for obtaining proof in defense against the said claim; and this defendant alleges that the witnesses on whose *ex parte* affidavits and *exhibits** the Mexican government since the adjournment of the said Commission has sought to impeach the said award * * * could have been examined by the Mexican government, and their testimony rebutted by this defendant while the said claim was pending before the said Commission and before it was decided by the Umpire."

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*The letter-press copy-book and the original letters of Garth to Exall were obtained by the Mexican district attorney, Gaona, from Granger in December, 1877 (*Record*, 576, 577), and were attached as exhibits to De Lagnel's affidavit of December 2, 1878. (*Record*, 198–200.) They were offered in evidence in this suit in Tuttle's examination (*Record*, 471–473) and De Lagnel's (*ib.* 478, 479).

The answer says further on this point (*Record*, 431):

> "That the said Mexican government could have examined the said Gamboa and Loaiza after their depositions in support of this defendant's claim had been filed, as aforesaid, with the said Commission, in the year 1870, while the said claim of this defendant was pending before the said Commission during the years 1871, 1872, 1873, 1874, or 1875, but purposely refrained from so doing because aware that this defendant could and would have submitted proof to the said Commission showing the falsity of such later affidavits and the duress and fraud practiced by the Mexican government in obtaining them.*

It was held by Mr. Justice STORY in *Dexter* v. *Arnold*, 5 Mason, 303, that due diligence in such a case is proper to be put in issue. The learned Justice said:

> "If, indeed, it were doubtful, in case the bill of review should be allowed, whether the defendant could by plea or answer traverse the allegation in such bill, that the matter of fact is new, I should not hesitate to inquire in the most ample manner into the truth of such allegation before the bill was granted, in order to prevent gross injustice.
>
> "*But as every such bill of review must contain an allegation that the matter of fact is new*, it seems to me clear, upon principle, that, *as it is vital to the relief*, it is traversable by plea or answer, and must be proved, if not admitted at the hearing."

According to that opinion no bill of review will lie if the newly-discovered evidence could have been obtained by reasonable diligence before the original hearing.

The granting of a bill of review for newly-discovered

* The Company did this very thing in the case of Avalos, from whom, subsequent to his first deposition in support of the claim, the Mexican authorities, by threats and intimidation, obtained a false affidavit, the falsity and fraudulent character of which he exposed in a later affidavit, which was also filed with the Commission.

evidence is matter of discretion, and must be brought forward by petition to the court. Such a petition must describe the new evidence distinctly and specifically, and when discovered, and its bearing on the decree.

(See, also, *Barnett* v. *Smith*, 5 Call., 98; *Todd* v. *Barlow*, 2 Johns. Ch., 551; *Livingston* v. *Hubbs*, 3 Johns. Ch. R., 124; *Lansing* v. *Albany Ins. Co.*, 1 Hopk. Ch. R., 102; *Allen* v. *Ranney*, 1 Conn., 569; *Dulin* v. *Caldwell*, 29 Ga., 362; *Elliott* v. *Adams*, 8 Blackf., 103; *Cook* v. *McRoberts*, 5 Ky. Law Reports, 764; *Auble* v. *Ealer*, 2 Bin., 581, *note*; *Plymouth* v. *Russell Mills*, 89 Mass. (7 Allen), 438.)

On page 312 of the same opinion, Mr. Justice Story said:

> "A qualification of the rule quite as important and instructive is that the matter must not only be new but that it must be such as that the party, by the use of reasonable diligence, could not have known, for if there be laches or negligence in this respect, *that destroys the title to the relief*."

Referring to the authorities, the learned justice observed:

> "That doctrine was expounded and adhered to by Lord ELDON in *Young* v. *Keighley*, 16 Ves., 348, and was acted upon by Lord MANNERS in *Barrington* v. *O'Brien* (2 B. & Beatt., 140), and *Blake* v. *Foster* (2 B. & Beatt., 457, 461.)
>
> "It was fully recognized by Mr. Chancellor KENT and received the sanction of his high authority in *Wiser* v. *Blackley* (2 Johns. Ch. R., 488), and *Barrow* v. *Rhinelander* (3 *Id.*, 120.)
>
> "And in the very recent case of *Bingham* v. *Lawson* (3 Jac. & Walk., 243), Lord ELDON infused into it additional vigor."

Due diligence requires that every clue shall be followed, and if the defendant fails to question a witness on a matter which there is reason to believe is within

his knowledge, the defendant can not afterwards say that he did not know or had no means of knowing what such an examination would have disclosed. For how can one know what an inquiry would disclose if he does not make it?

In *Young* v. *Keighley* (16 Ves. Jr., 350), Lord Chancellor ELDON said:

> "The ground of this application upon the plaintiff's affidavit is that he and his solicitor, now deceased, did not know that Keighley's partners had an interest with him in the securities proposed and would be bound by his acts. It is extremely difficult to come to that conclusion *where the information before them led to those facts*, and the solicitor's want of information would not form a just ground for granting a bill of review, if, *by what was before him*, he was sufficiently apprised of them *to enable him to acquire complete knowledge*. The letter stating the securities to be *their* securities * * * at least put the plaintiff *upon inquiry*."

So in *Poullain* v. *Poullain*, 79 Ga., 11:

> "If a party *had an opportunity* to examine a witness at the trial, he can not, in general, obtain a new trial on the ground of newly-discovered evidence where the evidence relied upon is that of such witness."

It is observed in Story's *Equity Jurisprudence*, § 252*a* (12th ed., I.: 246), that—

> "the fraud, to justify a court of equity in setting aside the judgments of courts, either of law or equity, domestic or foreign, must be that which occurs in the very concoction or procuring of the judgment itself, and something not known to the opposite party at the time, and *for not knowing which he is not chargeable with neglect or inattention*."

So ADAMS on *Equity* (Phillips' edition, 1881, pp. 196, 197):

> "And still less can any equity arise *if the facts were known at the time of the trial*, and the grievance complained of has been caused either by a mistake in the pleading or *other mismanagement*, or by a supposed error in the judgment of the court." (Citing *Bateman* v. *Willis*, 1 Sch. & L., 201; *Harrison* v. *Nettleship*, 2 M. & K., 428; *Taylor* v. *Sheppard*, 1 Y. & C., 271.)

The American authorities are collected in a note by Mr. Phillips (*ib.*, pp. 197, 198) in support of the proposition that "no injunction will be granted against a judgment *where there has been negligence on the part of the complainant in availing himself of a defense at law or other neglect.*"

This doctrine is part of the definition of a bill of review:

> "A bill of review is a bill filed to reverse or modify a decree that has been signed and enrolled for error in law apparent on the face of such decree, or on account of new facts discovered since publication was passed in the original cause, and which *could not by the exercise of due diligence have been discovered or used before the decree was made.*" (FOSTER'S Fed. Pr., § 354, citing MITFORD'S Pl., ch. I, § 3, pt. 3; STORY'S Eq. Pl., §§ 403–420; *Irvin* v. *Meyrose*, 7 Fed. Rep., 533; *Nickle* v. *Stuart*, 111 U. S., 776.)

So this court in *Kennedy* v. *Georgia State Bank*, 8 How., 586, said:

> "Since the ordinances of Lord BACON a bill of review can only be brought for 'error in law appearing in the body of the decree or record' without further examination of matters of fact, or some new matter of fact discovered which was *not known and could not possibly have been used at the time of the decree.*"

In *Life Ins. Co.* v. *Bangs*, 103 U. S., 782, Mr. Justice Field, for the court, said:

> "A suit in equity will not lie to give effect to defenses against a claim when they might have been fully set up in an action at law. There must have been some fraud practised upon the court or some unconscientious advantage taken of the defendant *without any fault or negligence on his part*; or there must be some newly-discovered evidence *which could not have been obtained at the trial*, and which if produced would have changed the result, before a court of equity will interfere with the judgment rendered, or with the contract upon which it was recovered. (Citing *Home Ins. Co.* v. *Stanchfield*, 1 Dill. 424; *Marine Ins. Co.* v. *Hodgson*, 7 Cr., 332; *Phœnix Ins. Co.* v. *Bailey*, 13 Wall. 616.)

In *Wood* v. *Carpenter*, 101 U. S., 135, Mr. Justice Swayne said, for the court, near the close of his opinion:

> "There must be reasonable diligence; and the *means* of knowledge are the same thing, in effect, as knowledge itself."

And Lord Camden in *Smith* v. *Clay*, 3 Bro. Ch. 639, said that—

> "Nothing can call forth this court [a court of equity] into activity, but conscience, good faith, and *reasonable diligence;* when these are wanting, the Court is passive and does nothing."

In *United States* v. *Bullock*, the United States District Judge said:

> "It is extremely doubtful whether the petitioners bring themselves within the rules prescribed by courts of equity for granting a bill of review, *for the receipt that now seems to have been found was always in the department*—it was about eight years before it was looked for, and then certified to be lost or burned; whether reasonable diligence has been made use of to search for it is yet very questionable. It is ordered

that the petition be dismissed." (Note to *United States* v. *Nourse*, 6 Pet., at p. 485.)

This rule was, by a court of the United States, held applicable to the Government of the United States when it was the real party plaintiff seeking to recover public money due from one of its officers.

When the Government enters into commercial transactions or becomes a litigant, it abdicates its sovereignty, and is subject, like a private citizen, to the law of the land.

In *Cooke et al.* v. *The United States*, 91 U.S., 389, Mr. Chief Justice Waite, delivering the opinion of the court, said:

> "Laches is not imputable to the Government, in its character of sovereign, by those subject to its dominion. *United States* v. *Kilpatrick*, 9 Wheat., 735; *Gibbons* v. *United States*, 8 Wall, 269. Still a government may suffer loss through the negligence of its officers. If it *comes down from its position of sovereignty* and enters the domain of commerce, it submits itself to *the same laws that govern individuals there.* Thus, if it becomes the holder of a bill of exchange, it must use the same diligence to charge the drawers and indorsers that is required of individuals; and, if it fails in this, its claim upon the parties is lost. *United States* v. *Barker*, 12 Wheat., 559. Generally, in respect to all the commercial business of the Government, if an officer specially charged with the performance of any duty, and authorized to represent the Government in that behalf, neglects that duty and loss ensues, the Government must bear the consequences of his neglect."

In *United States* v. *Barker* (*supra*), the court said, per Mr. Chief Justice Marshall:

> "There was no doubt that the United States had no right to recover on account of the neglect in giving due notice after the return of the bills."

In *United States* v. *Bank of Metropolis*, 15 Pet., 377, it was held:

> "Where the United States, by its authorized agent, become a party to negotiable paper, they have all the rights and incur all the responsibilities of individuals who are parties to such instruments. There is no difference *except that the United States can not be sued. But if the United States sue* and the defendant holds its negotiable paper, the amount of it may be claimed as a credit, if, after being presented it has been disallowed by the accounting officers of the Treasury, and if the liability of the United States on it be not discharged *by some of those causes which discharge a party to commercial paper*, it should be allowed by a jury as a credit against a debt claimed by the United States."

In *United States* v. *Hancock*, 30 Fed. Rep., 851, it was said:

> "Such a suit is part of the compulsory litigation forced upon claimants by that act; and as the Government consented to appear therein as an equal litigant, and *impliedly waived all rights peculiar to it as a sovereign*, the maxim *nullus tempus occurrit regi* does not apply.
>
> * * * * * *
>
> "It would be indecent to suppose that Congress, when thus summoning all claimants of land in the ceded territory before tribunals of its own creation did not intend that the United States should appear before them as a litigant seeking and willing to render justice, contending *on equal terms with their adversaries, claiming no rights not conceded to them and no special privileges as a sovereign.*" (P. 860.)

Though under our Constitution a State may appear as a suitor in the first instance in this court, yet this is the only privilege it can claim over the individual litigant. So it was held in *State of Pennsylvania* v. *The Wheeling*,

&c., Bridge Co., 13 How., 518, in which Mr. Justice McLean said, for the court (pp. 559, 560):

> "In this case the State of Pennsylvania is not a party in virtue of its sovereignty. * * * The rights asserted and the relief prayed are considered as *in no respect different from those of an individual.* From the dignity of the State, the Constitution gives to it the right to bring an orignal suit in this court. And this is the *only* privilege, if the right be established, which the State of Pennsylvania can claim in the present case."

The convention of July 4, 1868, simply created a forum in which the claims of individual citizens of Mexico against the United States and individual citizens of the United States against Mexico were to be examined and determined, and the Law of Nations, under which this reciprocal international adjudication was effected, required that the parties should use due diligence in the prosecution and defence of the claims. International arbitration is one of the *legal* means of redressing individual wrongs and vindicating individual rights, as shown by Phillimore in his work on International Law (vol. III, pp. 2, 3), where he refers to the analogy between National or Municipal Law and the Law of Nations, and says, referring to war as "the terrible *litigation of States*":

> "II. But as we approach these awful confines, we must remember that it is the bounden and most sacred duty of every State to exhaust every LEGAL *means of redress* before it has recourse to the dreadful necessity of war. These means are * * * classed under two heads, viz.:—
>
> 1. Measures taken *via amicabili.*
>
> 2. Measures taken *via facta*, which, nevertheless, fall short of war.
>
> III. Measures taken via amicabili are: 1. Negotiation; 2. *Arbitration.*"

This legal international procedure for the redress of individual wrongs requires due diligence in its conduct not less than municipal law, and provides as stringently against any default by requiring the parties to acquiesce in the sentence if it is within the terms of the submission and the arbitrators have been incorrupt and impartial. (*Supra*, 61, 62; 83–87.)

VII.

The Court of Claims erred in not dismissing the bill on the ground that its allegations relate solely to issues passed upon by the Mixed Commission when it examined the claim of La Abra Company, and that the so-called newly-discovered evidence is merely cumulative upon issues already tried, and does not show, or tend to show, the kind of fraud for which equity will grant relief.

The learned counsel for the Government made the following admission in open court and in his brief on the demurrer:

> "Defendants, through one of their counsel, Mr. Kennedy, have filed an argument of 90 pages in support of their sixth and tenth causes of demurrer. Their sixth cause is that the allegations of the bill (including certain newly-discovered proofs appended thereto as Exhibit B, and by paragraph XVI of the bill made part thereof) *relate solely to issues passed upon by the Mixed Commission when it examined the claims of La Abra Company.*
>
> "*This is true*, and there is no need to say anything more on that point in behalf of complainant. If this be ground for demurrer the bill must be dismissed, and the whole purpose of the act must fail (if the power it confers be judicial)." (*The United States* v. *La Abra Co.*, 29 Ct. Clms., 484.)

(*a*) As stated in the History of the Case (*supra* 7), the same question of fraud submitted to the Court of Claims by the jurisdictional act of 1892, was tried by the Mixed Commission under the convention of 1868.

General Adams was charged with improper conduct in obtaining the evidence for the Company in Mexico by witnesses who were examined on behalf of the Mexican Government in the Mexican courts, and copies of whose depositions were filed with the Commission. (*Record*, 111, 113.) These charges, with that evidence, were pressed upon the attention of the Commissioners by the Mexican agent, Mr. Avila (*Record*, 413, 420), and emphasized by the Mexican Commissioner, Mr. Zamacona, in his opinion. (*Record*, 405, 406.) Testimony in rebuttal was submitted by the Company (*Record*, 162–164, 178, 179, 190, 191), and the controversy on this point, with all the evidence, arguments, and opinions, went to the Umpire,* who, after due deliberation, rendered his award in favor of the Company. The same charges of fraud and perjury were again brought to his attention in the motion for a rehearing, in regard to which he said, in his decision denying the motion:

> "In the above-mentioned case, No. 489, the Mexican agent would wish the Umpire to believe that all witnesses for the claimant had perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been proof of perjury, the Umpire would not have been justified in refusing credence to the witness on the one side or the other, and could only weigh the evidence on each side, and decide to the best of his judgment in whose favor it inclined. If perjury can still be

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* It was provided in the treaty (Art. II) that "such Umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and *consulted with the Commissioners*, shall decide thereupon finally and without appeal."

proved by further evidence, the Umpire apprehends that *there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the Government of either would insist upon the payment of claims shown to be founded upon perjury.*" (Ex. Doc. No 103, H. R., 48th Cong., 1st Sess., 128.)

Thus it appears that the evidence obtained by General Adams in Mexico was subjected to the scrutiny of the Commission, and was found sufficient, with testimony from other sources, to justify the award; and, furthermore, that Mexico was put upon notice to lay a judicial foundation, if she could, for her objections to the award by bringing the alleged perjurers, who were within her jurisdiction, to trial and conviction for their crime. Instead of doing this, she made the contracts with Slaughter and Granger, which are set out in the History of the Case (*supra*, 9–13), under which, for a compensation, contingent upon their success, *they* were "to undertake the proof of fraud," and she carefully refrained from putting on trial for perjury Chavarria, Galan, Avalos, Green, Clark, Cole, or Cryder, some of them citizens, and all of them residents, of Mexico, and within reach of her process.

(*b*) Not only was the same question of fraud examined and determined by the Mixed Commission but so also was the question (on a mass of conflicting evidence), whether the Company was compelled to abandon its business and property in Mexico by the unlawful acts of the local magistrates, or whether the cause of the abandonment was that the ores would not pay to work, and that the Company's funds were exhausted. The Government's counsel admitted that this issue had been tried, and the Court of Claims declares that it has, in effect, retried it collaterally. (*Supra*, 88.) Indeed, it is upon its retrial and decision of *this* issue—which was tried and

determined under the convention—that the court bases its conclusion that the award was obtained by fraud; for, as shown elsewhere, the court does not find that any material part of the evidence was false, or that any particular witness was perjured. No actual fraud, that could be defined, under the old practice, in the decree—showing what it was, who did it, and how it was done—is found by the court, but it reaches its conclusion constructively, or by a process of reasoning which it expresses as follows (*Record*, 842):

> "The court upon an examination of all the testimony, excluding such portions of it as in the opinion of the court are not competent, determines as a conclusion of fact that the La Abra Silver Mining Company did not abandon its mines in Mexico because of the interference of the people of Mexico and the public authorities of the Mexican government, or either, but on the contrary that it abandoned its mines because they were unproductive and for want of money to operate and work the same, *and* that the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other fraudulent practices upon the part of the said Company and its agents."*

Mexico—as the Court of Claims has said—is the real party plaintiff in this proceeding, and it is thoroughly settled that an issue which has been tried can not be retried between the same parties in equity. The rule is

* This conclusion was reached by the court because it differed from the United States Commissioner and the Umpire as to the moving cause of the Company's abandonment of its business and property; but, as argued elsewhere, the ores might have been poor and the Company short of funds, and yet the real reason of the abandonment have been the persistent illegal interference and hostility of the officials and a justifiable fear on Exall's part for his life or liberty.

thus stated in *United States* v. *Throckmorton* (98 U., S., 61, head note by Mr. Justice Miller):

> "The frauds for which a bill in chancery will be sustained to set aside a judgment or decree between the same parties, rendered by a court of competent jurisdiction, are frauds extrinsic or collateral to the matter tried by the first court, and not a fraud *which was in issue in that suit.*"

In the body of the opinion Mr. Justice Miller said:

> "In all these cases, and many others that have been examined, relief has been granted on the ground that by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.
>
> "On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it is founded on a fraudulent instrument or perjured evidence, or for any matter *which was actually presented and considered in the judgment assailed.*"

Freeman on Judgments, vol. 2, sec. 489, pp. 858–862, says:

> "The procuring of a judgment by perjury or subornation of perjury, is doubtless a fraud, and such a fraud as would induce equity to grant relief, were it not for the fact that its existence can rarely or never be ascertained otherwise than by *trying anew an issue already tried in a former action.*
>
> "Whenever *an issue exists* in any action or proceeding, each of the parties should anticipate that his adversary will offer evidence to support his side of it, and should be prepared to meet such evidence with counter proof. When he has an opportunity to do this, and does not avail himself of it, or, though availing himself of it, is unable to overcome the effect upon the court or jury of the evidence offered by his adversary, *he can not, in effect, obtain a retrial of the issue before another tribunal by charging that the judgment against him was procured by perjury.*"

In *Ross* v. *Wood*, 70 N. Y., 8, the Court of Appeals held (all concurring):

> "Relief can only be granted upon some *new matter of equity not arising in the former case.* Equity will not take cognizance on the same grounds of the very point which another court of competent authority in the case has considered and decided. Per Chancellor Kent, *Simpson* v. *Hart*, 1 Johns. Ch., 91. Lord Redesdale, in *Bateman* v. *Willoe*, 1 Sch. & Lef., 201, says: 'I do not know that equity ever does interfere to grant a trial *of a matter which has already been discussed in a court of law, a matter capable of being discussed therein*, and over which the court of law had full jurisdiction.' This is the settled doctrine of courts of equity. *Williams* v. *Lee*, 3 Atk., 225; *Le Guen* v. *Gouverneur*, 1 Johns. Cas., 436; 1 Am. Dec., 121. And the rule should not be relaxed to retry questions deliberately tried and adjudicated by courts of equity having concurrent jurisdiction of the subject-matter with that in which the action to be relieved from the judgment or decree is brought."

In *Cotzhausen* v. *Kerting*, 29 Fed. Rep., 823, Dyer J., said:

> "It is not a sufficient ground of relief in equity against a judgment at law that one of the parties, or that some witness, or many witnesses, testified falsely upon *a material question of fact in issue.* If upon such grounds a court of chancery were to reopen issues settled by verdict of a jury, and thus relieve suitors from judgments recovered at law, it is difficult to see where litigation would stop, and what stability there would be in the adjudications of courts of law."

In *Moffat* v. *U. S.*, 112 U. S., 24, Mr. Justice Field, delivering the unanimous opinion of the court, said:

> "A strenuous effort is made by counsel to bring these cases within the doctrine declared in *U. S.* v. *Throckmorton*, 98 U. S., 61, and *Vance* v. *Burbank*, 101 U. S., 514, but without success. It was held in

those cases that the fraud which will justify the setting aside of the judgment of *a tribunal specially appointed to determine particular facts*, must be such as prevented the unsuccessful party from fully presenting his case, or which operated as an imposition upon the jurisdiction of the tribunal. Mere false testimony, or forged documents are not enough *if the disputed matter has been actually presented to and considered by the tribunal.*"

In *U. S.* v. *Flint*, 4 Sawyer, 52, in which the grounds of equitable relief from final judgments and decrees were exhaustively discussed, Mr. Justice Field observed:

"It is to no purpose in such case to invoke the doctrine that fraud vitiates all transactions, even in the most solemn, and that a court of equity will set aside or enjoin the enforcement of the most formal judgments when obtained by fraud. The doctrine of equity in this respect is not questioned; it is a doctrine of the highest value in the administration of justice, and its assertion in proper cases is essential to any remedial system adequate to the necessities of society. But it can not be invoked to *reopen a case in which the same matter has been once tried, or so put in issue between the parties that it might have been tried.* The judgment rendered in such a case is itself the highest evidence that the alleged fraud did not exist, and estops the parties from asserting the contrary. It is afterwards mere assumption to say that the fraud was perpetrated. The judgment has settled the matter otherwise; it is *res judicata.*"

Later on, and drawing the distinction between fraud extrinsic or collateral to the original action, and fraud intrinsic or at issue therein, the learned Justice said:

"The credibility of testimony, given in a case, bearing upon the issue, *is not an extrinsic collateral act*, but is a matter involved *in the consideration of*

the merits; and the introduction of false testimony, known or shown to be so, does not affect the validity of the judgment rendered."

These authorities are also conclusive on another objection to "the newly-discovered evidence," namely, that it is merely cumulative, upon issues already tried, and does not show, or tend to show, the particular kind of fraud, extrinsic or collateral, to the original trial, for which equity will afford relief. This kind of fraud, *e. g.*, preventing the presentation of the other party's evidence by unlawfully withholding it, as charged by Galan against the Mexican district attorney, Gaona (*Record*, 188), and by the Rosario and Carmen Mining Company, in its petition to Congress,* is not charged against the Company, in this proceeding, or hinted at in "the newly-discovered evidence." It is introduced to show two things—both of which were in issue and tried in the original trial—(1) that the material testimony was obtained by fraud, and (2) that the Company abandoned its business and property at Tayoltita because its mines were worthless and its means exhausted. As already stated, it was shown in the argument on the demurrer, and admitted by the Government's learned counsel, that these issues were tried and determined by the Mixed Commission under the Convention. (*Supra*, 127.)

The admission is as broad as it possibly could be—"*that the allegations of the bill* (*including certain newly-discovered proofs appended thereto as Exhibit B*, and by paragraph XVI of the bill made part thereof)—*relate*

* "The petitioners allege that the Mexican authorities viciously and dishonestly *purloined and suppressed the material evidence so taken and submitted by them in aid of their said claim*, by means of which fraudulent suppression of evidence by Mexican authorities and the introduction by them of evidence of perjured witnesses the same was decided adversely to them." (Rep. No. 700, H. R., 45th Cong., 2d Sess., 1.)

SOLELY *to issues passed upon by the Mixed Commission when it examined the claims of La Abra Company.*"

The chief importance of certain of Exall's letters, as they appear in the letter-press copy book, is that they support the testimony of Mexican witnesses to the effect that the ores mined by the Company did not pay for working. There was a mass of such testimony before the Umpire, and, even if he had allowed the Company the value which it put upon its mines (instead of taking the actual expenditures as the measure of damages), this issue could not be retried upon such evidence, because (1) it is cumulative, and (2), as already shown, and found as a fact by the Court of Claims, it could have been obtained by due diligence for use in the trial of the claim before the Commission. Nor could it be used in a retrial to impeach Exall as a witness, even if the award had been based on his uncorroborated testimony, instead of being, as it unquestionably is, supported by a mass of evidence that has been in nowise impeached.

The second of these points has already been discussed and authorities cited, but the case of *Livingston* v. *Hubbs*, 3 Johns. Ch., 124, bearing, as it does, on them both, is here cited again :

> "The defendant's attention (said Mr. Chancellor Kent), was called to the very fact, and he was bound to use reasonable diligence in bringing forward his proof on that point. The necessity of reasonably active diligence, in the first instance, is imposed upon parties, and a bill of review is not to be sustained *merely to accumulate testimony. This is the clear and necessary doctrine of the court.*"

Then, citing Lord Bacon's Ordinances, the learned Chancellor says (p. 126):

> "A bill of review upon matter of fact, must be

upon special leave of the court and upon oath of the discovery of new matter, or evidence which hath come to light after the decree, *and could not possibly be had or used at the time when the decree passed.* If the party might have used the new proof when the decree was made, it is not a sufficient ground for a bill of review."

* * * * * *

(Page 127): "Most of the testimony goes to the credit of the witnesses examined on the part of the plaintiff, but *the credit of witnesses is not to be impeached after the hearing and decree.* Such applications for an examination to the credit of a witness are always regarded with great jealousy, and they are to be made before the hearing (*White* v. *Fussell*, 1 Ves. & B., 151). *There would be no end of suits if the indulgence asked for in this case was to be permitted.* The nature of the newly-discovered evidence must be different from that of *the mere accumulation of witnesses to a litigated fact.*"

Counsel does not forget that the Court of Claims has held that the rules of chancery are not applicable to this suit, but if the court is right in thus interpreting the jurisdictional act, then this proceeding, in which the same court said it sat "in the exercise of equity powers," is not a suit, but a mere investigation, from which no appeal can be taken to the Supreme Court of the United States.

In *Southard et al.* v. *Russell*, 16 How., 547, Mr. Justice Nelson, delivering the opinion of this court, cites "the rule as laid down by Chancellor Kent" (*supra*), and observes (pp. 569, 570):

"The soundness of this rule is too apparent to require argument, for, if otherwise, *there would scarcely be an end to litigation in chancery cases, and a temptation would be held out to tamper with witnesses*

for the purpose of supplying defects of proof in the original cause." *

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* The danger indicated by Mr. Justice Nelson is illustrated by Mexico's contracts with Slaughter and Granger (*supra*, 9, 10, 15, 16), and by Slaughter's so-called petition to Congress, in which "the newly-discovered evidence" was garbled and falsified.

Another illustration is furnished by Mexico's attempts, in 1877 and 1878, to obtain documentary evidence from Exall, in New York, upon promise of a large amount of money and immunity from prosecution.

The Mexican Minister (Mr. Zamacona), General Slaughter, and Mr. Lines, with the assistance of two detectives (Fisher and Weed), made persistent efforts in New York to purchase from Exall books and papers of the Company, which they supposed were in his possession, but which he had left at Tayoltita, and which the Mexican district attorney, Gaona, was obtaining from Granger, under the agreement between them, at the same time—late in 1877 and early in 1878—at Mazatlan.

Mr. Kittelle, who had been requested by Exall to find out for him, as a friend, what the detectives wanted, and who were behind them, was examined in the Senate investigation, and what follows is from his testimony. (Rep. 2705, Sen., 50th Cong., 2d Sess., 773):

> "I asked him (Weed) definitely for the names of the parties that stood behind him in this matter, and *what assurance Mr. Exall had that the money would be forthcoming if he consented to their proposition.*
>
> "Q. Well, go on and state what Mr. Weed said to you on that subject.—A. At that time Mr. Weed * * * named Mr. Lines, General Slaughter, and Mr. Zamacona as the parties, and said *the money would be furnished by Mr. Zamacona*, but he believed that the Mexican government stood behind him, or stood behind them all.
>
> "Q. Was anything said at that interview in regard to immunity for Exall?—A. Oh, certainly, that was a part of the—— he (Weed) confirmed what he (Fisher) said; he said the same in substance as Fisher said to me. He said *the parties were strong, and would protect Mr. Exall from the consequences that might result from the change of his testimony, or for his furnishing them with the desired testimony.*"

Fisher, one of the detectives, was also examined, and he said, in answer to a question as to what he told Exall (*ib.*, 889):

> "*I was liable to tell him a good many things for the purpose of getting evidence out of him* * * * I have not any doubt that I told him it could be arranged satisfactorily, *so that no harm would come to him.*"

Of a kind with these sinister and forbidden methods were the false charges made against the late General Adams, on the authority of the Mexican government, while the convention for a rehearing was pending in regard to his record in the Mexican war and the war of the rebellion, for which (and their tardy withdrawal by Mexico's counsel) see Appendix V, *infra*.

VIII.

The Company had in the award a vested right of property of which the bill seeks to deprive it without just compensation or without due process of law.

It is admitted that the Company was a corporation—a citizen of the United States—and that it owned mines, reductions works, and other property in Mexico. Any losses it may have there sustained by reason of the acts or defaults of Mexican officials gave it a right to recover damages from Mexico, and this right is property. Mr. Chief Justice Kent in *Gracie* v. *New York Insurance Co.*, 8 Johns. R., 237, remarked:

> "If France should at any future period agree to and actually make compensation for the capture and condemnation in question, the Government of the United States, to whom the compensation would in the *first instance* be payable, would become *trustee* for the party having the equitable title to the reimbursement."

Justice Story in *Comegys* v. *Vasse*, 1 Pet., 193, speaking for this court, said (p. 215):

> "The *right to indemnity* for an unjust capture, whether against the captors or the sovereign, whether remediable in his own courts or by his own extraordinary interposition and grants upon private petition, or upon public negotiation, *is a right attached to the ownership of the property itself*, and passes by cession to the use of the ultimate sufferer."

Referring (p. 217) to *Randall* v. *Cochran*, 1 Ves., 98, Mr. Justice Story said that the case—

> "stands upon the true ground. It considers the right of indemnity as travelling with the right of *property*."

Alluding to the provisions for indemnity which had been made by treaty with Spain in the case under consideration, he declared that the treaty—

> "recognized *an existing right to compensation* in the aggrieved parties, *and did not, in the most remote degree, turn upon the notion of a donation or gratuity.* It was demanded by our Government *as matter of right, and, as such, it was granted by Spain.*"

This opinion of Mr. Justice Story was considered by this court in *Phelps* v. *McDonald*, 99 U. S., 298, as "exhaustive and conclusive." The court, in the last-named case, said, speaking of the claim of a citizen against a foreign government:

> "There is no element of a donation in the payment ultimately made in such cases. Nations, no more than individuals, make gifts of money to foreign strangers. Nor is it material that the claim can not be enforced by a suit under municipal law which authorizes such a proceeding. * * * If the demand be just, and recognized as valid by the law of nations, the claimant or his government, if the latter choose to do so, may still press it upon the attention of the alien government.
>
> "If the thing be assigned, the right to collect the proceeds adheres to it and travels with it whithersoever the *property* may go. They are inseparable. Vested rights *ad rem* and *in re*—possibilities coupled with an interest and claims growing out of property—pass to the assignee. The right to indemnity for the unjust capture or destruction of property, whether the wrongdoer be a government or an individual, is clearly within this category."

In *Emerson* v. *Hall*, 13 Pet., 409–413, the court again cites with approval *Comegys* v. *Vasse* (*supra*), and speaking of a claim against a foreign government for spoliations, declares:

> "The demand is, in such case, founded upon the

law of nations, and the obligation is perfect upon the offending government. It is true, remuneration can not be recovered against the government by action at law, but, if justice be not done, the government of the injured citizen, in the exercise of its discretion, will protect and enforce *his* rights." (Cited on another point, *supra*, 60, 61.)

See, also, *Milnor* v. *Metz*, 16 Pet., 221; *Mayer* v. *White*, 24 How., 317; *Bachman* v. *Lawson*, 109 U. S., 659.

It was admitted by the Government's counsel in the court below—

> "That a claim of an American citizen against a foreign government is private property, passing by assignment, voluntary or involuntary, and forming assets in his estate; that a judgment on such claim in his favor, rendered by a court of competent jurisdiction, in a suit between him and such foreign government, is also property; and that such a judgment can only be set aside or vacated by judicial proceedings between the same parties, and not by legislative action." (29 Ct. Clms., 459, 460.)

Having this property right, it can not be pretended that the Company lost it because of the fact that the Government presented the claim and the evidence upon which it rested to the Joint Commission, or because of the manner in which Mexico made payment thereof. The injured citizen "must," to use the language of this court in *United States* v. *Diekelman* (92 U. S., 520), "seek redress through his own government. His government must assume the responsibility of presenting his claim, or it need not be considered." So Vattel and Phillimore (cited *supra*, 62).

The only way in which the Government's counsel could escape the effect of his admission was by suggesting that there had been an *appropriation* of the Company's claim

by the United States, and a release of Mexico, which "release and appropriation," he said, "was effected by Article V of the Treaty of 1868, with respect of all claims on Mexico arising prior to its ratification—the appropriation taking effect November 20, 1876." (29 Ct. Clms., 460.)

But at this date the Company's claim had been merged in the Umpire's award, which was rendered on the 27th of December, 1875, and the Vth Article of the Treaty, instead of being "a release and appropriation," was a covenant between the high contracting parties "to consider the result of the *proceedings of this Commission* as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction prior to the exchange of the ratifications of the present Convention." That is, the awards were to take the place of the claims, and the two Governments (Art. II) were "to consider the decisions of the Commissioners conjointly or of the Umpire, as the case may be, absolutely final, and conclusive upon *each* claim decided upon by them or him, respectively, and *to give full effect to such decisions*, without any objection, evasion or delay whatsoever."

There was no release or appropriation on either side, but each Government paid in cash to the other the sums awarded in favor of their respective citizens. Mexico deducted the sum total of the awards in favor of her citizens from the sum total she owed to the United States for the awards in favor of our citizens, but this amount was restored by Congress to the Secretary of State, so as to put into his hands for distribution the exact amount that was awarded to our citizens.

In earlier times it was usual, as may be seen by reference to the case of *Randall* v. *Cochran* (*supra*), for the sovereign to grant letters of reprisal against the offending

nation to his individual subjects who had unjustly sustained losses at its hands. Provided with these letters, these citizens obtained reparation for themselves or for others who had suffered. When not themselves the only sufferers, it was usual for the King to appoint commissioners to distribute the proceeds of these reprisals among the sufferers. Lord Hardwicke found, in the case just cited, that these commissioners would not permit the underwriters, but only the *owners*, to make claim for the losses, although the owners were already satisfied for their loss by the underwriters, and he decreed that the former should account for the same to the latter. (*Comegys* v. *Vasse*, 1 Pet., at p. 214.)

In the present advanced state of the law, and owing to the growth of civilization, it is the practice of governments to seek, in all cases, by diplomatic negotiation or arbitration, the settlement of such claims. A citizen, spoliated by a foreign government, though entitled to obtain redress from such government, must obtain it through means of his own government. (Wharton's Dig. Inter. Law, sec. 214; and authorities cited *supra*, 60–62). His government, having taken charge of the case for the purpose of pressing it diplomatically, continues to control and conduct it when it is referred to arbitration. The contention that was made by counsel below that this award is to be considered public money, because, under article 2 of the treaty, all claims, and the evidence in support of them, were required to be presented to the Joint Commission by the respective governments, is, in view of the authorities and the practice of governments, simply astonishing. It was stoutly maintained by our Commissioners, Messrs. Marcy and Brackenridge, under our treaty of 1839 with Mexico—substantially similar in its provisions to the one under consideration—that American citizens were designated therein

*as parties in interest on the one hand and the Mexican Republic on the other.**

* ART. I of this treaty provided: It is agreed that all claims of citizens of the United States upon the Mexican government, statements of which, soliciting the interposition of the Government of the United States, have been presented * * * until the signature of this Convention shall be referred to four Commissioners * * * to examine and decide * * * according to such evidence as shall be laid before them on the part of the United States and the Mexican Republic, respectively.

The IVth article provides for the delivery of all documents in relation to these claims in the possession of our State Department and of all those in the custody of Mexico to this board for the adjustment of these claims.

The Mexican Commissioners contended that the board could "receive no documents unless from the departments of the respective governments, and in the form and manner in which they may be transmitted from the same."

Our Commissioners (Messrs. Marcy and Brackenridge) declared that they differed *toto cælo* from their associates on this subject, and insisted that "the right of an individual to be heard, either by parol or in writing," was an "inherent right of man;" that in the cases before the board *each claimant* was "the *actor* or plaintiff, the State of Mexico the *reus* or defendant, and the Board of Commissioners the *judex* or judge," and that it was "the right of both parties to be heard, each by his agent or counsel (if he shall so choose), in writing or *viva voce*, as he may select."

As the Mexican Commissioners resented the expression "*reus*" as applied to the Mexican Republic, the American Commissioners explained that they had used it merely as indicating a party defendant; "that in every contested case there must be two parties, and that the *Convention designated American citizens as parties in interest on the one hand and the Mexican Republic on the other.*" (Moore, International Arbitration, 1227, 1228.)

This is cited to show that though the two governments are parties to Conventions for the settlement of individual claims, and though the proceedings thereunder are conducted through governmental agencies, the individual claimants have been recognized as the real parties in interest.

Under the terms of that Convention, of which the Mexican Commissioners demanded a strict construction, it became necessary to agree upon an indirect communication with the claimants, when further evidence was needed, in order that they might file it in the Department of State, from which the Commission would subsequently obtain it.

At the outset of the proceedings under the Convention of 1868 Mr. Fish, the Secretary of State, said while the responsibility of deciding questions of fact and law rested with the Commissioners, "it has been and is the purpose of this Department to interpose no obstacle to the submission of any claim *with such proofs* and *arguments* in its support *as the claimant* may furnish." (*Record*, 743.)

Under Art. II of the Convention of 1868, which provided that the Commissioners and also the Umpire were "to hear, if required,

The Company's claim in this case has simply been merged in the award, and this award is a *judgment* of a court of competent and exclusive jurisdiction. Speaking of the award of the Emperor of Russia, Mr. Attorney General Wirt firmly contended that it was "the solemn and *authoritative decision of a regularly constituted tribunal* on the rights of the parties litigant before it." (6 American State Papers, Foreign Relations, 950, 951.)

Mr. Secretary Fish described the Venezuelan Mixed Commission as "the High Court." (Mr. Fish to Mr. Partridge, Aug. 14, 1869, Ex. Doc. 176, H. R., 41st Cong., 2d Sess., p. 15; see, also, p. 35, where he speaks of "the judicial character" of that Commission.) Mr. Seward described the same Commission (*supra*, 87) as "a court of the highest order known to public law."

Mr. Lawrence says, in *note* 51, on page 133 of his edition of Wheaton's International Law, that—

> "The difference between a mediator and an arbitrator consists in this: that the arbitrator pronounces a *real judgment* which is *obligatory*, and that the mediator can only give his counsel and advice."

The decision of this court that the award of the Commission under the treaty of 1819 with Spain is not reexaminable, and that "the parties must abide by it as the *decree of a competent tribunal of exclusive jurisdiction*," has already been cited (*supra*, 88).

In La Abra case there was a long contest, a real trial*—

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one person on each side on behalf of each government on each and every separate claim," they heard counsel for the respective claimants, and this has been the custom under similar provisions in later arbitrations.

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*This was admitted by the Mexican Minister at Washington, who said: "There was no laches on the part of Mexico at the trial of either of the claims. In the Abra case *she made a vigorous defense*, and a careful examination of the evidence will convince a lawyer (which the Umpire unfortunately was not) that he erred in giving the preponderance of evidence to the claimant." (*Mr. Romero to Mr. Frelinghuysen*, January 25, 1884, Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 780.)

actor, *reus*, and *judex*—and, as we have seen, the treaty provided in the most stringent and solemn terms for the finality and conclusiveness of the decision in each case, whether made by the Commissioners jointly, or, on their disagreement, by the Umpire.

The admission of the Government's counsel (*supra*)—

> "that a claim of an American citizen against a foreign government is private property * * *; that a judgment on such claim in his favor, rendered by a court of competent jurisdiction, in a suit between him and such foreign government, is also property; and that such a judgment can only be set aside or vacated by judicial proceedings between the same parties, and not by legislative action"—

is fatal to his case, for it has been shown by the terms of the convention and of the award itself, that the claim was properly presented as *La Abra Mining Company* v. *Mexico*, and that the award was rendered *on the claim* and *in favor of the claimant.*

Specific Claims were submitted to this Joint Commission, and awards made thereon are the property of the Claimants.

First. The convention of 1868 described the claims to be submitted to the Joint Commission as "claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of the Mexican Republic, arising from injuries to *their* persons or property by authorities of the Mexican Republic," etc. (Art. I.) It required the decision of the Commissioners and of the Umpire to be "given upon *each claim* in writing;" and the Presidents of the two republics engaged to consider the decision "as absolutely final and conclusive upon *each* claim decided." (Art. II.) Article IV provided "when decisions shall have been made by the Commissioners and the arbiter in *every case* which

shall have been laid before them, the total amount awarded in all the *cases* decided in favor of the *citizens* of the one party shall be deducted from the total amount *awarded to the citizens* of the other party, and the balance * * * shall be *paid* * * * to the government *in favor of whose citizens the greater amount may have been awarded*," etc.

Second. The method of docketing these claims in this "High Court" indicates that judgment was to be rendered in favor of individual claimants—"La Abra Mining Company *v.* Mexico, No. 489." As Mr. Marcy said in the commission of a similar nature, the American citizen was the "actor," Mexico the "reus." (*Supra*, 143, *note*).

Speaking of an award of the same Commission as made the award in La Abra case, this court said, per Mr. Justice Lamar: * "The claim there in controversy was *expressly* recognized as a *specific* claim by the Commission organized under the provisions of the treaty with Mexico;" and the court declared that the claimants had received "the sum *specifically awarded to them* by the Commission." (*United States* v. *Weld*, 127 U. S. 51.) It is in this opinion that the court distinguishes between awards such as these—"recognized as specific"—and gross sums paid by another government to ours in settlement of a class of claims *en masse*.

Sums so paid in gross by a foreign government on account of indemnities due our citizens are distributed by our Government among the citizens who have a moral claim to them. This court, referring to an indemnity paid in a lump sum by Great Britain to our

* Mr. Justice Lamar was a member of the Judiciary Committee of the Senate in 1880 when the nature of La Abra award and the question whether it could be submitted for review or modification to the Court of Claims was thoroughly discussed. (*Supra*, 21, 22.)

Government in pursuance of the Geneva award* said:

> "It was held in *United States* v. *Weld*, 127 U. S., 51, that this award was made to the United States as a nation. The fund was at all events a *national fund to be distributed by Congress as it saw fit.* * * * No individual claimant had, as a matter of strict legal or equitable right, any *lien upon the fund awarded*, nor was Congress under any legal or equitable obligation to pay any claim out of the proceeds of that fund. * * * While * * * there were no means of compelling Congress to distribute the fund * * * and while the claimant was remediless * * * nevertheless there was at all times a moral obligation on the part of the Government to do justice to those who had suffered in property." (*Williams* v. *Heard*, 140 U. S., 529.)

Now, as we have said, this court in the *Weld* case made a clear distinction between an award in gross, covering a class of claims, like the Geneva award, and an award upon a single specific claim, like La Abra's. Referring to the case of *Alling* (surviving partner of

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* This was a national indemnity paid for the breach of Great Britain's neutral obligations.

The Treaty of Washington was negotiated for the express purpose (Art. I) of removing and adjusting "all complaints and claims ON THE PART of the *United States;*" while the convention of July 4, 1868, with Mexico, was negotiated for the adjustment of "all claims ON THE PART of *corporations, companies,* or *private individuals, citizens* of the United States, upon the Government of the Mexican Republic, arising from injuries to *their* persons or property," etc. (Treaties and Conventions, 478).

But it must be remembered that the Treaty of Washington provided for *two* Commissions—one (Art. I) to settle "all complaints and claims ON THE PART of the *United States,*" and the other (Art. XII) "all claims ON THE PART of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty * * * and all claims * * * on the part of corporations, companies, or *private individuals,* subjects of Her Britannic Majesty's Government, upon the Government of the United States," etc.

The Commission sitting under Article XII of this Treaty allowed to British subjects awards amounting in the aggregate to $1,929,819, which amount was appropriated by Congress "to pay the *sums awarded to British subjects.*" (18 Stats., 71.)

Belden & Co.), whose claim was adjudicated by the same Commission as La Abra's, Mr. Justice Lamar said (p. 56):

> "The claim there in controversy was *expressly recognized as a specific claim* by the Commission organized under the provisions of the treaty with Mexico, and was therefore dependent upon the treaty and grew directly out of it. In this case [*Weld's*] the reverse is true. The Treaty of Washington did *not* recognize this claim as a specific claim. The award of $15,500,000, directed to be paid by Great Britain, was to the United States *as a nation.* The text of the treaty itself speaks of the 'claims on the part of the *United States,*' and in article 7 the *gross* sum was 'to be paid by Great Britain to the United States.'"

The payment by Mexico to our Government of these specific awards was, to use the language of Attorney General Hoar (in a similar case—13 Op., 19), "*of course* intended to be *in trust* for parties whose claims should be ratified by the board."

Under a convention concluded October 14, 1832, for the settlement of claims growing out of the depredations inflicted upon American commerce by Murat during the years 1809, 1810, 1811, and 1812 (Treaties and Conventions, 1100, 1101), the King of the Two Sicilies obligated himself to pay to the Government of the United States 2,115,000 Neapolitan ducats. The payments were to be made in *nine annual installments,* a part to be applied to reimburse the United States for certain expenses incurred, which are mentioned in the convention, "the residue to be distributed amongst the claimants by the said Government of the United States in such manner and according to such rules as it may prescribe." (8 Stat., 442.) By Act of March 3, 1833 (4 Stat., 666), provision was made for a board of commissioners to receive all claims filed under

this treaty and make awards. Mr. Auguste Davezac, the United States Chargé d'Affaires at the Netherlands, who had been sent on a special mission in 1833 to the Kingdom of the Two Sicilies, transmitted to Mr. Louis McLane, the Secretary of State, in his dispatch of January 20, 1834, a copy of a communication from the government of the King, dated December 14, 1833, proposing to pay at once the amounts of the debts, less a discount of 25 per cent., instead of making payment in the nine years allowed by the treaty. (MSS. volume, Dept. of State, entitled "Naples—4.")

On December 26, 1833, Mr. McLane wrote to him as follows:

> "Having learned incidentally from a communication from Mr. Livingston that you had entered into a negotiation with the Neapolitan government for some alteration of the terms of the convention of the 14th day of October, 1832, without any instructions for that purpose, I have to express the surprise and regret which are felt by the President that you should have been induced to enter upon a subject of so much importance without previously ascertaining his views, and through the accustomed channel." (Then follow instructions requiring him to inform the government of the King that he was unauthorized to take any action in the matter.)

And he adds:

> "It may well be questioned whether this Government could by a new treaty vary the rights of the claimants, without their consent, as fixed by the existing convention, and until the claimants can be ascertained by the final proceedings of the commission such consent can not be given." (MSS. volume, State Department, entitled "The Netherlands, No. 14," pp. 10 *et seq.*)

On February 19, 1834, Mr. Davezac, replying to this instruction, assured the Secretary that he had entered

into no negotiation on the subject, but had merely transmitted the unofficial communication of the government containing the offer in question—which offer he had, since the receipt of the Secretary's instruction, declined.

President Jackson, referring, in his sixth annual message, dated December 1, 1834, to this offer, said:

> "The first installment due under the convention of indemnity with the King of the Two Sicilies has been duly received, and an offer has been made to extinguish the whole by a prompt payment—an offer I did not consider myself authorized to accept, as the indemnification provided is *the exclusive property* of individual citizens of the United States." (3 Messages, &c., of the Presidents, 98.)

Then Congress passed a bill authorizing the compromise of the claims allowed by the Commissioners under the treaty.

President Jackson's main objection to this bill, which he returned to the Senate, March 3, 1835, without his signature, was that *it impaired a vested right.* The debt due by the King, said the President, was "the *private vested property* of the citizens of the United States," to whom it was awarded. "*Neither the executive nor the legislature can properly interfere with it without their consent.* With their consent the executive has competent authority to negotiate about it for them with a foreign government—an authority Congress can not constitutionally abridge or increase." (3 Messages, &c., of the Presidents, 146.) That case and the one at bar are almost identical, for it is not conceived that *certificates* of award, such as were issued in the Sicilian and Venezuelan arbitrations, are anything more than evidences of the titles created by the awards themselves. For purposes of sale or assignment a certified copy of the award has always served as well as the certificates, which have in some cases been issued to the successful claimants.

Later (December 26, 1835), *a convention* was concluded for the payment in one sum of the balance of the indemnity, and it described the awardees as "the claimants *entitled* to the indemnity *by the* AWARD of the Commissioners" (*i. e.*, the domestic Board of Commissioners)—and it spoke of them as "having agreed" to the new arrangement. (Treaties and Conventions, 1101.)

The vested rights of the individual awardees in the Venezuelan awards were asserted, even more emphatically, by so eminent a jurist and statesman as Mr. Seward, who said, in a note to the Venezuelan envoy:

> "We are compelled, therefore, to decline any examination of the correctness of the decisions upon the *merits* of the several cases decided by the Caracas Commission, whether arrived at by the concurrence of the Commissioners or by the award of the Umpire, to whom the convention, in case of their disagreement, committed the final adjudication of the case. We must, for the same reasons, decline to examine the expediency of the *rules of procedure* by which the Commission thought proper to govern its investigations and the assignment of evidence [certificates] of its awards to the persons interested therein. *All such persons* may claim with show of reason, which it is difficult to refute, that they have *a vested interest in the awards*, indefeasible by the action of *either or both* the governments, *which surrendered to a common arbiter, without reserve, their entire jurisdiction in the premises.*" (Mr. Seward to Mr. Castro, March 3, 1869, Ex. Doc. No. 5, Sen., 41st Cong., 1st Sess., 7.)

Third. The award of Sir Edward Thornton, the Umpire (Record, 8, 10), "with reference to the case of 'La Abra Silver Mining Company *v.* Mexico,' No. 489," was "that there be paid by the Mexican government, *on account of the above-mentioned claim*, the sum of," &c. Further on, he said that the Mexican government was "bound to compensate the *claimants* for the losses which they suffered through the misconduct of the local authorities;

that *the claimants* should be reimbursed the amount of their expenditures;" and, referring to the ores on the patio, "that *the claimants are entitled to an award* upon this portion of the claim." (*Ib.*, 9).

Nothing more conclusively sets at rest the question of the individual property of the claimants to the awards made by this Mixed Commission than the judgment of the former Umpire, Dr. Francis Lieber, in the case of Samuel A. Belden & Co.

In that case, the United States had already paid, in 1855, to said Belden & Co., on account of their losses, over $18,000, and had taken from them an *assignment*, in writing, of their claim against Mexico, as security for the repayment of the amount so advanced, with interest. This is recited in the award by the Umpire, who concludes as follows:

> "Nothing in this award is to be construed as preventing the United States from *retaining* out of the gross sum awarded herein, as due that Government on said assignment, the aforesaid sum of $35,920.81—*paying to Belden & Co. the balance.*" *

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* See history of this claim in Alling *v.* United States, 114 U. S., 562. The whole award is as follows: (*Mss.*, Dept. of State.)

Wednesday, July 19th, 1871.

SAMUEL A. BELDEN & Co. *vs.* MEXICO. } No. 131, American Docket.

The Umpire, Dr. Francis Lieber, having decided that claimants in this case are entitled to an award, Mr. Commissioner Wadsworth delivered the following order and award of the Commission:

This case having been decided by the Umpire, and his opinion returned to the Commissioners, and it appearing that the claim had been promptly presented to the Mexican Government by the Minister of the United States resident at Mexico (Mr. Letcher), and subsequently by Mr. Conkling;

It is now ordered and awarded, that the government of the Republic of Mexico pay to the United States, *for and on behalf of claimants, Samuel A. Belden & Co., for 299 bales of tobacco*, the sum of thirteen thousand one hundred and fifty-four dollars and fifty-six cents, with interest from the 20th day of October, 1849, at 6 per cent per annum, and the further sum, for goods seized and sold

It was in reference to this award that section 1 of the Act of June 18, 1878 (20 Stats., 144), was inserted, which is as follows:

> "And in making such distribution and payment, * * * the proportionate amount of any award of which, by its terms, the United States *is entitled to retain a part*, shall be deducted from the payment to be made on such award, *and shall be paid into the Treasury of the United States* as a part of the unappropriated money in the Treasury."

Section 4 of that act requires the Secretary of State, in making payment of these awards, to deduct any sums of money that "may be *due to the United States* from any corporation, company, or private individual *in whose favor awards* shall have been made under the said convention."

Fourth. The executive and legislative departments of the Government considered this award as the private property of La Abra Company. This is shown as follows:

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under execution and loss attending same, of ten thousand dollars, with interest from March 6th, 1850, in the currency of the United States; making a total to July 10th, 1871, of fifty-three thousand and ninety-nine dollars and twenty-five cents (*i. e.* $53,099.25).

But as the United States paid to said Belden & Co., on the 27th of July, 1855, on account of his supposed losses, the sum of eighteen thousand three hundred and forty-seven dollars and twenty-eight cents, and took from them an assignment in writing of their said claim (now before us), which advance, with interest after the rate allowed claimants, amounts now to the total sum of thirty-five thousand nine hundred and twenty dollars eighty-one cents (*i. e.*, $35,920.81-100), *nothing in this award is to be construed as preventing the United States from retaining out of the gross sum awarded herein, as due that Government on said assignment*, the aforesaid sum of thirty-five thousand nine hundred and twenty dollars and eighty-one cents, *paying to Belden & Co. the balance*, viz., seventeen thousand one hundred and seventy-eight dollars forty-four cents.

There is also awarded $100 costs of printing, &c., in currency.

W. H. WADSWORTH, *Am. Comr.*

FRAN'CO G. PALACIO, *M. C.*
RANDOLPH COYLE, *Secy.*
J. CARLOS MEXIA, *Srio.*

(*a*) Mr. Fish, in his note of January 19, 1877, to the chairman of the House Committee on Foreign Affairs, drew attention to "the necessity of making provision for carrying into effect the *awards*" under the convention of July 4, 1868. He said:

> "An appropriation by Congress will be necessary for the payment of the amount of *the awards against the United States*, which sum, by the terms of the treaty, is to be deducted from the awards against Mexico and from the amount to be paid by Mexico. Provision should also be made for the distribution among the several parties *entitled* of the money as it may be received, and also for the *reimbursement* to the United States of the amount paid by the United States toward the joint expenses of the Commission, and which, by the terms of the treaty, is to be *deducted from the awards*." (Mis. Doc. No. 39, H. R., 44th Cong., 2d Sess., 1.)

Thus, before the Act of June 18, 1878, was passed, the individual claimants were recognized by the Department of State as "*entitled*" to the amounts awarded upon their claims, less expenses advanced by the Government.

Mr. Evarts, Secretary of State, also wrote to the same chairman of the House Committee on Foreign Affairs, November 6, 1877—

> "No doubt the prompt distribution of money *awarded to our citizens*, and paid over to the Government of the United States *for that purpose*, is an OBLIGATORY DUTY which this Government should be most anxious to discharge. All delay is *at the cost of the claimants*, as the Government does not charge itself with interest on the money in its hands."

Mr. Evarts then says:

> "I have, however, hesitated to make this distribution of the money on hand, *which would be in accordance with the practice of the Government* (*i. e.*, to distribute without any act of Congress), because of

some legislation being necessary to make good to the fund the amount with which the Government of the United States is *chargeable.*"

Congress adopted the suggestion of the Secretaries by including in the second section of the Act of 1878, above cited, an appropriation of the proper amount, being, in the language of the act, "the aggregate * * * of the awards made under the said Convention * * * in favor of citizens of the Mexican Republic against the United States, and having been deducted from the amount awarded in *favor of citizens of the United States.*" This section declares that these sums, "*when paid to the Secretary of State*" * * * "shall be regarded as *part of the awards* made under the said treaty." Nothing could be more preposterous than the idea that the Government could be a debtor to a fund of which it was the owner.

(*b*) So in the Act of Parliament (18 and 19 Vict., cap. 77) for the distribution of the sums awarded to British subjects by the Claims Commission, under the Convention of 1853, the individual awardees are described as "ENTITLED *under the awards of the said Commissioners* and Umpire." The act of Congress of March 3, 1855, appropriates the amount of $277,102.88, as "having been awarded by the Commission *to British subjects, claimants under the Convention,*" and provides for the retention of the sum agreed upon for expenses, "not exceeding five per cent. of the whole amount *awarded to both citizens of the United States and British subjects.*" (10 Stats., 703, 704.)

(*c*) The treaty negotiated in 1882, for the reopening and retrying of this claim, which failed in the Senate, provided in the 5th article for the preservation, at all events, of the rights of "any *bona fide* third parties who have, with the observance of due care and diligence, become

possessed of any portion of said claim, for a just and valuable consideration." (Ex. M. [Confidential], 47th Cong., 1st Sess., p. 4.)

The Umpire, in his denial of motions for a rehearing, had also recognized the absolute property of the claimants in these awards, and their assignability. He said:

> "The decisions of the Umpire, without his wishes being consulted, have generally been made public both here and in Mexico. It is known that by the convention they are final and without appeal. It is not impossible, and indeed it is very probable, that some of the claimants, *in whose favor awards have been made*, may have been able to obtain, on the credit of these final decisions, advances of money or other values, or may have sold and entirely signed away to other persons, not previously interested in the claims, the whole amount of the awards. * * * There is no doubt that what is supposed, on the faith of the convention, to be a final decision of *a claim* would give *the claimant* a credit of which he would be able and likely to avail himself." (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 126.)

The capacity in which the President or Secretary of State holds money received from foreign governments in satisfaction of awards upon the claims of individual citizens was considered in Congress upon a bill authorizing the Department of State to distribute a fund known as the "Venezuelan accretions." These accretions consisted of interest and premiums realized on Government bonds in which Mr. Fish had invested funds received from Venezuela on account of the awards made to our citizens by the Caracas Commission. A report from the Senate Committee on Foreign Relations was made by Senator Turpie on this subject in April, 1894, in which, after stating that the interest and earnings of the fund followed the principal, the learned Senator said:

> "The Government of the United States received

and held the moneys in question only for one purpose—to disburse them to *its own citizens in liquidation of their claims as adjudged against Venezuela.* It *neither had* nor claimed any proprietary right therein, or any other interest, save that involved in the expenditure thereof.

"The *real owners* and beneficaries of the fund are that class of claimants whose claims were allowed under the provisions of the treaty by the Commission created thereby.

"Taking into consideration the respective positions of the three parties to the transaction—Venezuela, the United States, and the claimants under the treaty—the first is the payor, the last are the payees, and the United States was, and is, *a naked trustee or bailee of the fund for purposes of distribution.*" (Sen. Rep. No. 330, 53d Cong., 2d Sess., p. 2.)

Congress adopted this view, and the "accretions" were distributed accordingly. (28th Stat., 635.)

The language of the convention of 1868, and all the proceedings under it, bring the award of La Abra Silver Mining Company within the principle stated by the distinguished Senator. Every word of it is applicable to this case.

So in the Act of Congress of August 3, 1894, providing for the distribution of the interest and premiums accruing on the Virginius indemnity fund, it was declared and provided (28 Stats., 223):

"That the said sum, being the earnings of a fund which was paid to the United States *in trust* for the purpose of relief of the families of those of the ship's company and of such of the passengers as were citizens of the United States * * * *is* THE PROPERTY *of the beneficiaries of said original fund*, and the Secretary of State is hereby directed to distribute the same, together with all accretions thereof, accrued and which may accrue, among those persons who have already substantiated their right to participate in said fund, their heirs, or legal representatives,

under and by virtue of executive orders heretofore issued and published."

The case at bar is much stronger than this, for the amount due on the Company's claim, instead of being determined by an executive order, was adjudicated under the treaty of 1868 by a Mixed Commission organized for the express purpose of adjudicating such claims, and the award, until set aside in the manner provided by the law of nations, is part and parcel of the treaty, and is to the Government, the Company, and all concerned "the supreme law of the land."

All the conventions to which our Government has been a party for the settlement of individual claims by Mixed Commissions recognize the individual claimants as the parties pecuniarily interested in the result, by providing that there shall be a written decision specifying what is to be paid on each claim (as in the Claims Convention of 1853 with Great Britain (10 Stat., 990), and in that of 1868 with Mexico), or that a certificate of the award on each claim shall be given to the respective claimants (as in the conventions with Costa Rica, New Granada, Ecuador, Venezuela, and other countries).

But in whatever manner the rights of the individual claimants are recognized as the eventual payees, payment is made in the *first instance* to the Secretary of State or other proper representative of their government, for in these international adjustments governments deal directly with each other and not with each other's subjects or citizens. Prudential considerations require this practice, even in cases where the treaty would seem to require direct dealing with the citizen.

In all such cases, "the government," as Mr. Attorney General Legaré said, "is a mere stakeholder for the use of those who are *really entitled* to the proceeds paid over under a treaty." (4 Opin., 177.) A case arising under

Art. VII of the Jay Treaty shows this, a case in which Mr. Attorney General Breckenridge advised (1 Opin., 154): "The government has only to see that the moneys are paid to those *in whose favor they were awarded*, or to those who are legally entitled *under them*." In other words, though the VIIth Article of the treaty required the British government (Treaties and Conventions, 385) "to cause the same [the award] *to be paid to such claimant* in specie, without any deduction, at such places," etc., yet payment was made by Great Britain to our Government, which thereupon distributed the funds to the parties in interest.

On the other hand, where, by the convention of 1853 with Great Britain, it was agreed that all moneys awarded by the Commissioners, on account of any claim, *should be paid by one government to the other*, it was held that the moneys found due from the foreign government to the claimants, who were citizens of the United States, were to be paid to the Secretary of State, whose duty it was to have the same paid *to those entitled to receive them*." (2 Whart. Dig. Inter. Law, p. 703, citing 10 Opinion Atty. Gen., 31.) In both cases government pays to government, and the recipient pays the individual awardees.

But the Government contended below (29 Ct. Clms., 459)—

> "That the specific moneys whose disposition is directed by Act of Congress of December 28, 1892, to be determined in this suit, were *moneys of the United States*, and were not, before the passage of that act, subject to *any right—legal, equitable or moral*—of defendants thereto."

This was based upon the following statement of Mr. Chief Justice Fuller in *Boynton* v. *Blaine* (*supra*):

> "Under this convention it was the balance that was to be paid, after deducting from what was found

> in favor of one government that which was found in favor of the other. So that the moneys paid in liquidation of that balance belonged to the United States, to be increased by appropriation to the extent of the amounts allowed Mexico, and the aggregate to be distributed to the claimants as might be provided."

But, as we have shown, it was not "what was found in favor of one *government*" that was deducted from what was found in favor of the other (because the awards were not to the United States or to Mexico), but, in the words of the convention, it was the sum total of the awards in favor of Mexican *citizens* that was deducted from the sum total of the awards in favor of *United States citizens.* *

And this was merely a method of bookkeeping or adjustment of accounts, adopted for convenience, but, as Mr. Bayard afterwards said, exceedingly inconvenient in practice.† The method adopted was in substance, if not in form, the same as if the United States had paid in cash to Mexico the sum total of the awards in favor of Mexican citizens and Mexico had paid in cash to the United States the sum total of the awards in favor of our citizens.

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* The total amount awarded in all the *cases* decided *in favor* of the *citizens* of the one party shall be deducted from the total amount *awarded to the citizens* of the other party, and the balance * * * shall be paid * * * to the Government in favor *of whose citizens* the greater amount may have been awarded," etc. (Art. IV.)

The same phraseology is used in Art. III of the supplemental convention of November 20, 1874, extending the time of the Commission; and yet again in Art. III of the convention of April 29, 1876, extending the time of the Umpire. (Treaties and Conventions, pp. 707–709.)

† He reported to the President:

> "The result was merely to produce intricacy in the accounts of the two Governments, without the pecuniary liability of either being in any degree diminished." (Senate Doc. No. 109, 50th Cong., 1st Sess., p. 4.)

It has already been shown that the Department of State would have distributed the proceeds of the awards without any action on the part of Congress if an appropriation had not been necessary to restore to the fund the amount retained by Mexico for the awards in favor of her citizens against the United States.

The claims convention of December 4, 1868, with Peru (16 Stats., 751–756) was the same as that of July 4, 1868, with Mexico, except that there was no provision in the Peruvian case for striking a balance and paying the difference, or expressly requiring that the award should be "in favor of citizens," as in the Mexican case. Nevertheless—as the convention with Peru was expressly for the settlement of individual claims—the sums awarded on the claims of our citizens were paid by the Peruvian government to the Secretary of State, and by him paid over to the individuals entitled without any authority from Congress. In this arbitration there was but one award against the United States on a claim of a Peruvian citizen, and Congress made an appropriation for its payment, *designating the individual awardee by name*, as follows (16 Stats., 313):

> "To pay the government of Peru the sum of fifty-seven thousand and forty dollars in coin, being the amount *awarded to Esteban G. Montano* by the Joint Commission at Lima, Peru, acting under the claims convention between the United States and Peru of December 4, 1868."

So under the claims convention of August 7, 1892, with Chili, which required the cases to be decided "upon such evidence or information only as shall be furnished by or on behalf of the respective governments," and payment to be made "by the one government to the other," the sums awarded on claims of our citizens were paid by the Chilian government to the Secretary of State, and

by him paid over to the individuals entitled without any act of Congress authorizing such payment. And in neither Convention was there any provision for distribution other than the usual covenant between the high contracting parties "to give full effect to such decisions without any objections, evasions, or delay whatever." (27 Stats., 965–971.)

This long-continued practice of the Secretary of State, acting for the President, and the sales and assignments of such awards, or interests therein, which have been made by individual awardees, and recorded and carried into effect by the Department of State for nearly a century, are utterly incompatible with the idea that the United States is the beneficial owner of such awards, or holds their proceeds otherwise than as trustee.

But to return to *Boynton* v. *Blaine*, it appears from the language used by the learned Chief Justice, that he did not mean to say that "the moneys paid in liquidation of that balance belonged to the United States" *absolutely*, but, "*to be increased* by appropriation to the extent allowed Mexico, and the aggregate *to be distributed to the claimants* as might be provided." It can not be supposed that by the words, "as might be provided," it was intended to suggest that the act of Congress would not provide for the distribution in exact accordance with the awards.

It is unnecessary to say that the awards could not be altered or modified in that way, and we have already shown, by reference to the act itself, that it recognized the title of the claimants to the amounts awarded to them by the Commission, and provided for distribution accordingly. It is only by stopping in the middle of the sentence quoted from the learned Chief Justice, and suppressing the words by which he qualifies and explains the ownership of the money by the United States, that the construction contended for below can be main-

tained. There is no doubt but that against all the world, except the individual awardees, or those claiming under them, the moneys received from Mexico "belonged to the United States;" but, in the words of the Chief Justice, "to be increased by appropriation * * * and the aggregate to be distributed to the claimants, as might be provided." If the moneys had belonged to the United States absolutely, why should they be increased by appropriation and paid to the claimants at all, instead of being covered into the Treasury, as public moneys are required to be by law?

As said by this court in *Comegys* v. *Vasse* and *Phelps* v. *McDonald*, *supra*, there is no element of grace or donation in the recognition of such claims, and governments do not give away public moneys arbitrarily to individual citizens, at the expense of the body politic.

That this is the true construction of what the learned Chief Justice said, appears from *Frelinghuysen* v. *Key*, *supra*, in which the court held—

> "the whole purpose of the convention was to ascertain how much was due from one government to the other on account *of the demands of their respective citizens.*"

The cases cited by the Government (*Rustomjee* v. *The Queen*, L. R. 1 Q. B. Div., 487, and L. R. 2 Q. B. Div., 69, 73; *Burnand* v. *Rodocanachi*, L. R. 7 App. Cas., 333; *Great West. Ins. Co.* v. *The United States*, 21 Ct. Clms., 206, and 112 U. S., 193), all related to the disposition of lump sums or awards in gross, and not to specific awards upon individual claims.

The court seems to have thought that there was an award in gross under the Convention of July 4, 1868, and that this total or lump sum was awarded to the United States, thus bringing the Company's claim within the principles on which *Rustomjee* v. *The Queen*, *Burnand*

v. *Rodocanachi*, and the *Great West. Ins. Co.* v. *United States* (*supra*), were decided.

The court said (*Record*, 342) that the Company sought to maintain—

> "that upon the recovery of a *gross sum* upon the part of the *United States*, including the *claim of the Company*, a right became inherent in the Company," etc.

But the Company never sought to maintain any such proposition, for no "gross sum" was awarded to the United States, nor was *any* sum awarded to it except that to which it was entitled under its assignment from Belden & Co. (*Supra*, 152.)

The court also said (*Record*, 340), referring to the United States:

> "*It* is the party *in whose favor the award was made.*"

And the court speaks of this as a case (*ib.*)—

> "where one of the powers to an arbitration questions *an award in its favor.*"

This error is the basis of the court's decision.

The court was also mistaken as to the facts in *Rustomjee* v. *Regina* (*supra*), on which the Government relied for the doctrine that the United States had absolute control of the funds in question. Referring to that case, the court said (*Record*, 344):

> "In the treaty the sum of $3,000,000 was paid by China to England as part of the proceeds of *an international arbitration* in satisfaction of certain claims due British subjects for wrongs committed against their property while resident in China. The sum was paid in gross, *but the claim in question constituted a part of the basis on which the allowance of $3,000,000 was made.*"

On this it may be remarked (*a*) that there was no "international arbitration" in the case, but merely a payment

by China to Great Britain as a result of direct negotiations; (*b*) that the payment was made on account of debts due to British merchants by certain insolvent Chinese merchants, known as the Cohong, who had been licensed by the Chinese government, and with whom the British merchants had been compelled to deal; (*c*) that there had never been any judicial, diplomatic, or other exact ascertainment even of the gross amount of the Cohong's debts to British merchants; and (*d*) *that the Cohong had never recognized Rustomjee as one of its creditors.*

Referring to the treaty,* Lord Coleridge said:

> "The sum is paid in gross or in the rough, not as the *ascertained* total amount, but '*on account* of debts due to British subjects by Chinese merchants who are said to owe not 'three millions of dollars,' but '*very large sums of money*' to British subjects." * * *
>
> "*No specific sum was ever ascertained, either between the two governments or between the British government and the suppliant,* as the amount of the suppliant's claim, and it is plain that *no such specific sum was ever considered between the plenipotentiaries who negotiated the treaty.*
>
> "It is not, *therefore,* correct to say, as the suppliant does in his petition, that this money was ever paid to the plenipotentiaries of the Queen 'for the purpose of paying his claim.'"

Lord Justice Blackburn said:

> "It is impossible to say that because a man had sent in a claim * * * against a Hong merchant, and that *had never been investigated,* the Queen after receiving these $3,000,000 was bound to hand over the amount claimed, or that her ministers could be *justified* or *excused* in handing it over to the man *without investigation as to whether his claim was right or not.*"

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* 30 British and Foreign State Papers (1841–'2), p. 390.

Rustomjee had no standing at all, because, as already stated, his claim had never been recognized or finally passed upon by the Cohong. On this point, in the appeal, Lord Coleridge, C. J., said (2 Q. B. Div., 69, 72):

> "While the correctness of the claim was under investigation [in China], and *before*, according to Chinese practice, *any result was arrived at, or the amount of it was ascertained or admitted between the suppliant and the parties from whom he claimed*, the Chinese war broke out, and the suppliant, with other British subjects, was expelled from China."

One case could not be more clearly distinguished from another than Rustomjee's from the case at bar; for the essential element lacking in the one is the chief characteristic of the other.

Nor does the case of *Burnand v. Rodocanachi* (*supra*) afford any better support to the appellee's contention. That case concerned an award made by the Court of Commissioners of Alabama Claims, payable out of the gross sum paid under the Treaty of Washington for violation of the neutral obligations of Great Britain (*supra*, 147). The judgment of the Commissioners was for the value of the cargo over and above the amount received from the insurer, who had paid the insured as for a total loss.

The act of Congress (18 Stats., 247) provided (*a*) that if such compensation or indemnity should not have been equal to the loss or damage actually suffered, allowance might be made for the difference, and (*b*) that no insurer should share in the fund unless he showed to the satisfaction of the Commissioners that during the rebellion the sum of his losses, in respect to his war risks, had exceeded the sum of his premiums or other gains in the premises. The English court decided that the insurer could not recover from the insured, because the latter, as

one of the learned justices expressed it, had received the money, under the act of Congress and judgment of the American court, *to keep for himself.*" (7 App. Cas., 344.)

This was simply a recognition of the power of Congress, which the appellant has never questioned, to dispose of a lump sum or gross award, as its sense of justice might dictate. But it is precisely from a case like that and *Rustomjee's* that this court in *United States* v. *Weld* (*supra*), distinguishes a case like La Abra's, in which, to use the words of Mr. Justice Lamar, the award of the Commission was "that the Mexican government should pay to the United States, *on account of the claim, a specific sum of money.*" This is La Abra's case in a nutshell.

The other case on which the complainant relies to sustain the proposition that the proceeds of awards, "whether paid in lump, or in specific sums apportioned to each claim," belong to the Government (29 Ct. Clms., 461), was the *Great Western Ins. Co.* v. *The United States*, 112 U. S., 193. But this, like *Rustomjee* v. *Regina* and *Burnand* v. *Rodocanachi* (*supra*), involved a lump sum or award in gross, a share of which was claimed by the plaintiff, and not an award upon a single specific claim, like La Abra's. The case went off on the question of jurisdiction under § 1066, R. S., and this court declined "to express an opinion on the legal or moral obligation of the Government in the matter," but Mr. Justice Miller, who delivered the opinion, remarked, with reference to the exclusion of cases arising under treaties from the jurisdiction of the Court of Claims:

> "This limitation of the jurisdiction of the Court of Claims is in accord with *the uniform course of the Government in dealing with claims of our citizens against foreign governments.* In such cases * * * mixed commissions, composed of arbitrators appointed by each party, and an Umpire, have

> usually been created by a treaty which made the award of the commission obligatory."

The award in this case is one of that kind. The learned justice proceeds:

> "In cases like that of Guadalupe Hidalgo and the Treaty of Washington, under which the present claim arises, where the foreign nation pays or agrees to pay to this Government a *fixed* sum in discharge of a *class* of claims which is the subject of treaty, Congress has provided a commission at home to pass upon the claims asserted under the treaty."

Thus the distinction is made clear; for, as has been shown, there was no "fixed sum," agreed upon beforehand, to be applied to the payment of the awards under the convention of July 4, 1868, as in the treaty of 1819 with Spain or of Guadalupe Hidalgo with Mexico; but each award, under the convention of July 4, 1868, was to be paid in full and not *pro rata* out of a previously determined sum total, and each claim was to be examined and adjudicated separately upon its merits. Nor was the adjudication limited to "a *class* of claims," but "*all* claims on the part of corporations, companies, or private individuals," etc., were to be adjudicated. And the adjudication was not to be by a domestic board, or "commission at home," appointed solely by the United States, as it was under the treaty of 1819 with Spain and of Guadalupe Hidalgo with Mexico, but by a mixed or international tribunal in which both nations were represented, with a third, or umpire, in case of disagreement.

The whole object of a domestic commission for distributing a lump sum, like the Geneva award, is to do justice to the individual citizens concerned. But by means of a Mixed Commission two objects are accom-

plished at once—the international liability is ascertained, and the validity and amount of each individual's claim are judicially determined.

Fifth. This award, being the exclusive private property of La Abra Silver Mining Company, could not be divested, except by the judgment of an international tribunal established for proper cause by agreement between the two governments for the purpose of reviewing the awards.

This principle of international law was stated by Mr. Fish in the controversy with Venezuela, as follows:

> "You will say to the government of Venezuela that the President regards such a tribunal, established by the joint acts of two independent nations, in the exercise of one of the highest powers of sovereignty, as clothed with an authority (as to each case that comes legitimately before it) of which they can not be divested, *except by the joint act of both contracting parties*, and of which it ought not to be divested, except where manifest fraud is exposed. It is not enough that in some cases error of judgment, mistake of law, or irregularity of proceedings is shown; *the contracting parties take the risk of such error, mistake, or irregularity, and agree to abide the findings of the Commissioners, notwithstanding them.* Nations create and resort to such tribunals only because there is no other tribunal capable of sitting in judgment upon such questions. It is the duty of every Christian statesman to jealously guard their decisions from insinuations and assaults and to maintain their integrity. It is incumbent on whoever would set aside a *judgment* which is the only substitute, in the dealings of nations, for the issues of war, to establish clear charges of fraud within a reasonable time, and by *as conclusive proof as would be required to set aside the decision of a court of last resort.*" (Mr. Fish to Mr. Partridge, May 25, 1869, Ex. Doc. No. 176, H. R., 41st Cong., 2d Sess., 6, 7.)

Among the rules of international arbitration, "mostly

derived," he says, "from the civil law," Halleck lays down the following, with a long list of authorities:

> "A decision once formally delivered *can not be reconsidered without a new agreement*, for, when the opinion is delivered, the arbitration is *functus officio*." (Halleck's Inter. Law, Ch. XII, "International Disputes," p. 293.)

This court, by Mr. Chief Justice Waite, said in *Frelinghuysen* v. *Key*, 110 U. S., 63, 73, that—

> "The opinion of the Attorney General in the Gibbes' case, (13 Op., 19), related to the authority of the executive officers to submit the claims of Gibbes to the second commission after it had been passed on by the first, *without any new treaty between the Governments to that effect*."

In his third annual message to Congress (1883) President Arthur spoke of Mexico's charges against the Weil and La Abra awards as having "*made a new Commission necessary*." (II Wharton's Dig. Inter. Law, § 220, p. 558.) The convention for a review of these awards was then pending in the Senate.

As authority for the proposition that the awards could be reviewed only by a convention for a rehearing of the claims, Dr. Wharton cites Mr. Bayard's report of May 6, 1886, to the President, in which the following observations of Mr. Chief Justice Waite in *Frelinghuysen* v. *Key* are italicised:

> "Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators *until the diplomatic negotiations between the two Governments are finally concluded.* * * *
>
> "All we decide is that it is within the discretion of the President to negotiate again with Mexico in respect to the claims, and that *as long as the two Governments are treating on the questions involved*, he may

properly withhold from the relators their distributive shares of the moneys now in the hands of the Secretary of State." (II Wharton's Dig. Inter. Law, § 220, p. 562.)

In the same report Mr. Bayard referred to the provision in the Act of June 18, 1878, that "it should be lawful for him (the President) to withhold payment of said awards, or either of them, until such case or cases should be retried and decided *in such manner as the Governments of the United States and Mexico may agree.*"

> "The retrial of these cases was, therefore [said Mr. Bayard], subject to such international arrangement as might be agreed upon between the Governments of the United States and Mexico." (II Wharton's Dig. Inter. Law, § 220, p. 563.)

The rule of public law on this subject was stated as follows by Sir Frederick Bruce, late her Britannic Majesty's Minister at Washington, as Umpire, under the convention of 1864, between the United States and Colombia:

> "In civil courts an appeal lies to a superior tribunal; in international courts, which recognize no superior judge, *fresh negotiations are opened and a fresh commission appointed, to which the disputed cases are referred.*" (Journal of the Mixed Commission between the United States and New Granada, MSS., Dept. of State, p. 162.)

Dr. Wharton cites *Comegys* v. *Vasse* (1 Pet., 212), as authority for the following proposition:

> "The decision of an international tribunal over matters as to which it is made the supreme arbiter is final, and is not the subject of revision *except by the consent of the contesting sovereigns.*" (II Dig. Inter. Law, sec. 221, p. 572.)

On this point, Dr. Wharton also cites Mr. Bayard's report referring to the report of the Senate Committee

on the Judiciary, No. 172, 46th Cong., 2d session, as follows:

> "The substance of this report is that the result of an arbitration authorized by an international convention should not be defeated or controlled by *the separate action* of one of the two governments, but that *the proper remedy was in a new convention*, in which provision should be made for doing justice to all claimants." (Dig. Inter. Law, Vol. II, p. 562.)

The course which has been taken in the case of La Abra is discussed in the *Révue Générale de Droit International Public* (Paris, July–August, 1898), under the title of "En Matiere de Sentence Arbitrale," by Mr. A. Mérignhac, professor of International Law in the University of Toulouse, and author of *Traité Theorique et Pratique de L'Arbitrage International.*

Referring to the manner in which the two nations agreed in the first instance to submit to arbitration the claims, among which was La Abra's, the learned author expresses the opinion that if these rules were deemed useful and were observed in concluding the Agreement of 1868, they ought equally to have been followed in investing the United States courts with the right to revise the award rendered by the Umpire. And he adds [translation]:

> "To go to the root of the matter, in fact, *the consent of the two parties*, as we have already said, *should have been followed by a new agreement creating a superior court of arbitration.* The President of the United States was not compelled to ask Congress, as he did, to complete the work of the Executive. He ought himself to have negotiated with Mexico, directly, the organization of a new arbitration which could easily, with the consent of the Federal Senate,*

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*It seems that Mr. Mérignhac was not aware that in 1882 the President *did* negotiate a convention for rehearing the claim, and that it was *rejected by the Senate.*

have been referred, as was the case, to the American courts. And the President of the Mexican Republic was authorized to consent to the proposal, when made to him, with the approval of the Senate of his country. Hence, as may be seen, *the creation of the American Courts as a superior Tribunal of Arbitration appears to us to have been wrong, in consequence of a mere defect of form and a false application of the constitutional law of the country. In these matters, however, the form is the more important, in that it is the absolute safeguard of the subject-matter.*"*

The court will respect the law of nations (*The Nereide*, 9 Cranch, 388, 400, 420, 433, 449; *The Estrella*, 4 Wheat., 298, 311; *United States* v. *Percheman*, 7 Pet., 51, 87; *Jecker* v. *Montgomery*, 13 How., 498, 516; 1 Ops. Atty. Genl., 27; *In re Dillon*, 7 Sawyer, 561), and one of the principles of that law is that the result of an arbitration authorized by an international agreement can only be set aside for well-established reasons by a new Convention providing therefor. The grounds for such review are given *supra*, 83–87. To these may be added Bluntschli, who, in his Droit International Codifié, sec. 495, p. 261, says (Paris ed., 1870):

"La décision du tribunal arbitral peut être considérée comme nulle:

"(*a*) Dans la mesure en laquelle le tribunal arbitral a dépassé ses pouvoirs;

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* This award can only be reviewed, as this learned author intimates, under a diplomatic agreement between the two governments. This kind of negotiation is *wholly* intrusted by the Constitution to the President of the United States, and to the Secretary of State, acting on his instructions. (Act July 27, 1789, 1 Stat., 28.)

A comparison of this Act of 1789, creating the Department of Foreign Affairs (now the Department of State), with the earlier act passed under the Confederation in relation to the conduct of foreign affairs clearly proves that *all the power of Congress* over such matters was considered as transferred by *the new Constitution to* the President. (See 1 Stat., 28, note.)

"(*b*) En cas de déloyauté et de déni de justice de la part des arbitres;

"(*c*) Si les arbitres ont refusé d'entendre les parties ou violé quelque autre principe fondamental de la procédure;

"(*d*) Si la décision arbitral est contraire au droit international.

"Mais la décision des arbitres ne peut être attaquée sous le prétexte qu'elle est inexacte ou contraire à l'equité. Les erreurs de calcul peuvent toujours être rectifiées."

Chancellor Kent, from whose opinion in *Van Cortlandt* v. *Underhill* we have cited so freely (*supra*, 80–83), in regard to the finality of domestic awards, says in his Commentaries on the Law of Nations, referring to the grounds, as laid down by Heffter, on which international awards may be assailed:*

> "On this statement of grounds of objection, two remarks may be made: First, that they should rather be termed *excuses* for not taking up an award that may turn out different from what was expected; and secondly, that if Vattel's rule of laying down precisely the subject of the dispute, the propositions and the counter propositions, be rigidly adhered to, *there can be no legal reason* (always assuming that a competent, upright, and impartial arbitrator is selected) *for setting the award aside.*" (Abdy's Kent's Inter. Law, 156.)

* Heffter's grounds of objection, cited in Abdy's Kent (*supra*), are as follows:

"*Firstly.* If given without any sufficient agreement to refer, or beyond the terms of the agreement.

Secondly. If given by arbitrators who turn out to be utterly incapable.

Thirdly. If the arbitrator or the other (that is, the successful) party has not acted in good faith.

Fourthly. If the parties, or one of them, have not been understood.

Fifthly. If the judgment relates to things not in dispute.

Sixthly. If the terms are absolutely at variance with the rules of justice, and can not therefore form the object of any agreement.

Sixth. Subject to the right of the Government to reopen this award and retry the claim in pursuance of an international agreement in the manner thus described and for the reasons stated, this award is the individual property of the Company, wholly free from legislative control, except so far as it, like all other private property, may be liable to taxation or to be taken under the exercise of the right of eminent domain for just compensation. It was the clear intent of the convention of 1868 that, subject to the exception mentioned, the President should receive and distribute these awards to the parties in interest. To this end he covenanted with the President of Mexico (Art. II) to give *full effect* to the *decision* in *each case* without any objection, evasion or delay whatsoever, and by that covenant bound himself to cause the money received from the Mexican government to be paid to the awardee or his assigns; for "full effect" can be given to an award in favor of a citizen only by paying to him the sum awarded. Otherwise the award to such a citizen and the convention for the settlement of his claim would be a delusion and a snare.

Moneys of the United States can not be "drawn from the Treasury but in consequence of appropriations made by law." Under our system of government the power of the purse is, as this clause of the Constitution indicates, lodged in Congress; but it must, nevertheless, be remembered that there are moneys collected by executive officers which are not deposited in the Treasury, but on the contrary are applied by them without any direction whatever from Congress.

Halleck says (International Law, 788), speaking of the revenues collected in enemies' territory in our possession:

> "*Being no part of the moneys of the Treasury of the United States, their expenditure is not regulated by the*

general laws of the United States, but by the direction of the President of the United States, under whose authority they were collected."

The President, also, as the organ for conducting the foreign affairs of the nation, has, from the very beginning of the government, through the Secretary of State, received from foreign governments sums in satisfaction of injuries inflicted by them upon our citizens, and distributed them directly to the injured parties, their agents or assigns, without any act or intervention of Congress.

Recently, and presumably because of the great increase of responsibility cast upon the Department of State as the custodian of these funds—often of very large amounts—which must be safely guarded, a change has been effected by legislation requiring their deposit in the Treasury, still subject, however, it will be observed, to the sole orders of the Secretary of State, as regards their distribution.

This act (29 Stats., 32), approved February 26, 1896, requires that "hereafter all moneys received by the Secretary of State *from foreign governments* and other sources, *in trust for citizens of the United States*, or others, shall be deposited and covered into the Treasury," but it provides for the payment by the Treasury from these trust funds upon certificates of the Secretary of State. All indemnities paid by foreign governments to the Secretary of State, in satisfaction of injuries to our citizens, are thus expressly declared to be *trust funds*. The Secretary of State determines to whom these shall be paid and the amount to be paid, the Treasury being merely the custodian of the funds. For bookkeeping purposes it was necessary to raise an appropriation in advance, permanent in character and indefinite in amount, against which the certificates of the Secretary of State should be charged, and such an appropriation is found in the act.

In the recent arbitration between Italy and Colombia, the moneys paid by Colombia to Italy on account of the award made by President Cleveland, on the claim of Ernesto Cerruti, have been attached in the hands of the Italian government at the suit of Cerruti's creditors in Rome. (For. Rels., 1895, Part II, 957 *et seq.*; MSS. Dip. Corr. [Italy] Dept. State, 1897–'8.)*

This court, in *Phelps* v. *McDonald* (*supra*), noticed the fact that in a case arising under the Treaty of Guadalupe Hidalgo (*Clark* v. *Clark*, 17 How., 315)—

> "where the contest was between the bankrupt and his assignee, *touching a fund in the Treasury derived from a foreign government*, the Secretary, though not a party, *was enjoined from paying it over until the rights of the contestants were settled in the suit then pending.*"

It may be said that this injunction was granted under section 8 of a special act of Congress (9 Stats., 394), but, nevertheless, it was a clear recognition of the transferable rights of property on the part of individual citizens in the awards of the Commission.

The appellant having a vested right of property in the award, as has been shown, the Act of December 28, 1892, and the proceedings under it, take from it that right, contrary to the provision of the Constitution of the United States which declares that "no person shall * * * be deprived of * * * property without due process of law." (Vth Amendment of the Constitution.)

This fundamental principle is violated by a legislative act which attempts to divest a property right in a manner in which it could not have been divested by the law

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* This is a fact of which the court may take judicial notice, and for information as to which it may consult the Department of State. (*Jones* v. *The United States*, 137 U. S., 202; *Underhill* v. *Hernandez*, 168 U. S., 253.)

of the land existing at the time of the vesting of the right.

Due process of law was meant "to secure the individual from the *arbitrary* exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." (Bank *v.* Okely, 4 Wheat., 235, 244; Giozza *v.* Tiernan, 148 U. S., 657; Duncan *v.* Missouri, 152 U. S., 377; Missouri Pac. R. Co. *v.* Mackey, 127 U. S., 205; Leeper *v.* Texas, 139 U. S., 462; Hurtardo *v.* California, 110 U. S., 516, 535, and cases cited.)

Mr. Chief Justice Fuller said in Giozza *v.* Tiernan, *supra*, speaking of the "due process" clause, "Undoubtedly it forbids any arbitrary deprivation of life, liberty, or property, and secures equal protection to all under like circumstances in the enjoyment of their rights."

In *Murray* v. *Land & Imp. Co.*, 18 How., 272, 276, 277, this court said:

> "It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a *restraint on the legislative* as well as on the executive and judicial powers of the Government, and can not be so construed as to leave Congress free to make any process 'due process of law' by its mere will. To what principles are we to resort to ascertain whether this process enacted by Congress is due process? To this the answer must be twofold. We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to *those settled usages and modes of proceeding existing in the common and statute law of England* before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country."

We trust it has been sufficiently shown that the settled

usages and modes of proceeding known to municipal law as well as to the Law of Nations have been widely departed from in the trial of the right of property in this proceeding authorized by the Act of Congress of December 28, 1892.

But it was contended for the Government below (29 Ct. Clms., 465) that—

> "The act of 1892, to the extent of the appraised value of La Abra claim, provides a method of 'just compensation' for its release to Mexico."

The "*claim*" was "appraised" more than twenty years ago by an international court of competent and exclusive jurisdiction, and was merged in the award rendered by Sir Edward Thornton under the convention; and it can not now be "appraised" again in any such proceeding as this. Nor can "just compensation" for the "claim," or "for its release to Mexico," be the object of a suit by the United States in which it denounces the claim as fraudulent and seeks the entire subversion of the award.

ARGUMENT ON THE FACTS.

IX.

The Court of Claims erred in not dismissing the bill on the ground that the alleged fraud was neither properly charged nor proved by the complainants.

In regard to the complainants' charge of fraud, the court says (*Record*, 816):

> "It must be conceded that the fifteenth paragraph of the bill, by its *general allegations*, presents the substantial issue in this proceeding, and if those allegations are sustained, the complainants are entitled to decree as prayed for in the bill."

As to the burden of proof, the court held, as matter of course, that it was upon the complainants (*Record*, 817):

> "The respondent having an award of the Umpire, is entitled to the full benefits of that award, unless it is shown by sufficient proof that, within the meaning of the statute giving this court jurisdiction, the award, or some substantial part thereof, was obtained 'by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of said company or its agents, attorneys, or assignees.' *The burden is upon the complainants to satisfy the court that the award made by the Umpire was the result of fraud as indicated by the statute.*"

Recurring again to the XVth paragraph of the bill, the court says (*Record*, 817):

> "The pleadings reduced to their logical results, and the scope of the testimony circumscribed to its proper limits, bring the contention of this voluminous case to *the compass of the fifteenth paragraph of the bill.*"

The court then gives the substance of paragraph XV, and says:

> "The *general statements* of this paragraph, taken in connection with other portions of the pleading *more specifically* charging the fraud, may be treated as the *embodiment of the issues to be determined in this proceeding.*"

Paragraph XV of the bill is (*Record*, 15):

> "Your orator further shows that, in fact, the said defendant La Abra Silver Mining Company was not compelled by threats or acts of Mexican officials or people to abandon its said mines as stated in said memorial and in the proofs submitted by said defendant Company in support of its said claim, on or about the 20th day of March, 1868, or at any other time, but that said claim was a sheer fabrication, and every material allegation in said memorial con-

> tained was a falsehood, and that all the material testimony upon which said claim was allowed and said award was made was false, and known to be so by all the witnesses giving and swearing to the same, and by the said defendant Company when it caused the same to be exhibited as true to said Commissioners, and that the whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant Company, its agents, attorneys, and assigns."

We will first examine this paragraph, and then the "other portions of the pleading more specifically charging the fraud" in the XVIth paragraph of the bill.

The opening statement of the XVth paragraph—

> "that, in fact, the said defendant * * * was not compelled by threats or acts of Mexican officials or people to abandon its said mines as stated in said memorial"—

is merely the opinion of the pleader, positively expressed, that the United States Commissioner and the Umpire were mistaken in coming to the contrary conclusion. After stating the view which he took of the conduct of the Mexican authorities and people from the evidence before him, the Umpire said in his award (*Record*, 9):

> "In short, the Umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise."

The statement—

> "that said claim was a sheer fabrication, and that every material allegation in said memorial contained was a falsehood"—

although so sweeping, is radically defective as a charge of fraud for lack of precision and certainty. What *are*

the material allegations contained in the memorial? That the memorialist was a Company duly organized under the laws of the State of New York; that it purchased mines and erected works, and extracted ore and expended large sums of money in Mexico? All this is admitted. That the Prefect and the local magistrates interfered with the Company's work, and issued the orders produced in evidence? But the genuineness of these orders was admitted by the Mexican agent at the original trial, and by the Mexican Commissioner in his opinion rejecting the claim, and by the complainants in this suit. So that, as said by the learned Chief Justice of the Court of Claims in his dissenting opinion (*Record*, 850)—

> "There is but one way by which they can have the international question re-examined, and that way is by alleging and proving that the orders and letters * of the Mexican officials, upon which the Umpire relied, and which made the international case presented to him, *never existed*, and that the award was obtained by fraud effectuated not by perjury, but by forgery."

There is thus not only a lack of the circumstantiality and definiteness which the law requires in charging fraud, but no such fraud as meets the exigencies of the case is charged in the bill, and the decree of the Court of Claims is nothing but an expression of an opinion by the majority of the judges that the United States Commissioner and the Umpire did not properly determine the effect of these orders and letters and of the other evidence before them.

That, however, is the very question which the court

* Translations of these papers, accepted as correct by both parties, are printed in the opinion of the court on the merits. (*Record*, 829, 830.)

asserts, in the most unmistakable terms, was not submitted to them under the act (*Record*, 817):

> "We are not sitting as a court of review to determine whether upon the proof offered and admitted the award is to be sustained or justified by the weight of testimony, but whether it was procured by false testimony or fraudulent practice upon the part of the respondent.
>
> "*We are not to determine the question as to whether the Umpire found against the weight, or* GREAT *weight of the evidence*, but whether the award is the result of fraud and perjury upon the competent testimony."

The XVth paragraph of the bill charges, at the close:

> "That the whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant Company, its agent, attorneys and assigns."

But *what* was the fraud that was so "effectuated," and what particular part of the evidence, on which the United States Commissioner and the Umpire relied, was false and fraudulent, and what witnesses were suborned, and who suborned them, and when, and where, and by what means?

The requirements of the law in this regard are stated by a standard text-writer as follows:

> "In suits instituted for the purpose of impeaching transactions on the ground of fraud, it is essential that the nature of the case should be distinctly and accurately stated. A mere general charge of fraud without alleging specific facts, is not sufficient to sustain the bill. It must be shown in what the fraud consists and how it has been effected. The fraud alleged must be set forth specifically in particular and in detail, so that the person against whom it is charged may have the opportunity of knowing what he has to meet and of shaping his de-

fense accordingly." (Kerr on *Fraud and Mistake*, Bump's ed., 365, 366, citing in the notes, in addition to the English cases, *Harding* v. *Handy*, 11 Wheat., 103; *Conway* v. *Elliston*, 14 Ark., 360; *Pendleton* v. *Galloway*, 9 Ohio, 178; *Spence* v. *Duren*, 3 Ala., 251; *Bell* v. *Henderson*, 6 How. (Miss.), 311.)

In *Beaubien* v. *Beaubien*, 23 How., 190, the court per Mr. Justice Nelson said:

> "The particular acts of fraud or concealment should have been set forth by distinct averments, as well as the time when discovered, so that the court may see whether by the exercise of ordinary diligence the discovery might not have been before made. (*Stearns* v. *Page*, 7 How., 819; *Moore v. Greene*, 19 How., 69.)"

In *Stearns* v. *Page* (*supra*) the court said:

> "A complainant, seeking the aid of a court of chancery under such circumstances must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment—must specify *how*, *when*, and in *what manner* it was perpetrated. The charges must be definite and reasonably certain, capable of proof and clearly proved."

In *Knox* v. *Harshman*, 133 U. S., 155, the court said, by Mr. Justice Gray:

> "The allegation that the record of the judgment as it stands is a gross fraud upon the judgment debtor is in terms, as it must be in legal effect, *limited to the particulars specified in the bill.*"

In *United States* v. *Atherton*, 102 U. S., 372, Mr. Justice Miller said for the court:

> "A bill in chancery to set aside a judgment or a decree of a court of competent jurisdiction for fraud must set out distinctly *the particulars of the fraud*, the *names* of the parties who were engaged in it, and the *manner* in which the court or the party injured was misled or imposed upon. * * *

"It is at war with the whole character of proceedings in courts of equity to call in aid its extraordinary power to set aside on these allegations such a solemn public record as a patent of the United States." (Citing *Marquez* v. *Frisbie*, 101 U. S., 473.)

In *Ambler* v. *Choteau*, 107 U. S., 586, it was said by Mr. Chief Justice Waite, for the court (p. 590):

"While the allegations of fraud in their general terms are as broad as language can make them, specifically they are confined by other allegations to the use of the patented invention in Missouri by the Missouri corporation of which the defendants are stockholders and directors. * * * The words 'fraud' and 'conspiracy' alone, no matter how often repeated in a pleading, can not make a case for the interference of a court of equity. Until connected with some specific acts for which one person is responsible in law to another, they have no more effect than other words of an unpleasant signification. While in this case the offensive words are repeated often enough, the facts to which they are applied are not such as to make the defendants answerable to the complainant for the damage and other relief that he asks."

So in *Clodfelter* v. *Hulett*, 72 Ind., 137–144—

"The use of epithets, however bountifully multiplied, will not supply the place of facts."

And in *Ockenden* v. *Barnes*, 43 Iowa, 609—

"Fraud is never sufficiently pleaded except by the statement *of the facts on which it is based.*"

The following English authorities on this subject are cited in Chitty's *Equity Index*, vol. V, pp. 5195–5197:

"Evidence of alleged conversations between witness and the defendant, in which the defendant admitted that he had defrauded the plaintiff, rejected because not put in issue." (*Farrell* v. ———, 1 Moll., 363.)

"Evidence of confession of fraud must be rejected if not put in issue by the pleadings. A general charge of fraud is not sufficient to entitle such evidence to be heard; it must be set out particularly, and the person to whom made, so as to give the party to be charged the opportunity not only of denying the fact, but of discrediting the witness. And, although in issue, no decree will be made upon such evidence of admission without sending a case to law." (*Mulholland* v. *Hendrick*, 1 Moll., 359.)

"It is the duty of the court, in suits for the cancellation of agreements on the ground of fraud, to maintain the principle that no relief be given unless a sufficient case of fraud is distinctly alleged in the pleadings and proved as alleged." (*Martin* v. *Westbrook*, 7 L. T. N. S., 449.)

"The bill must show not merely of what the alleged fraud consists but how it has been effected." (*New Brunswick & Canada Railway & Land Co.* v. *Conybeare*, 9 H. L. Ca., 711; 31 L. J. C. H., 297; 10 W. R., 305; 6 L. T. N. S., 109.)

"A general charge of fraud is to be referred to and explained by the particular allegations of fraud which the bill contains; but if there be no definite or specific charge of fraud, a vague charge where the facts alleged may or may not amount to a fraud, will not sustain the bill upon demurrer." (*Mundy* v. *Knight*, 3 Hare, 497; 8 Jur., 904.)

"A bill stated that by fraudulent collusion between the defendants colluding and confederating with various other persons, certain documents had been secreted, and certain income fraudulently appropriated by the defendants—*held* on demurrer, that these charges of fraud were too general and that specific acts of fraud must be charged." (*Bothomly* v. *Squires*, 1 Jur. N. S., 694.)

"Loose allegations in a bill of fraudulent concealment on the part of the defendant not stating what the facts are which were concealed, will not support a bill on demurrer. In order to sustain a bill to set

> aside an agreement on the ground of fraud, the plaintiff must aver on the face of the bill specific acts of fraud which he is prepared to prove, and tender an issue on those facts." (*Bainbridge* v. *Moss*, 3 Jur. N. S., 58; affd. 3 Jur. N. S., 62.)

There is no excuse for any indefiniteness in this case. The very same question of subornation and perjury was before the Commission and the Umpire upon testimony given by Granger's mistress (Cecilia Jiminez), Granger himself, Ralph Martin, Alonzo W. Adams, Carlos F. Galan, and other witnesses. (*Supra*, 128, 129.) Take the case of the last-named witness: he testified specifically as to the conduct of General Adams in respect of the two depositions (those of Loaiza and Gamboa) which are said to have been perjured and suborned; and, if Galan's testimony is true (and the appellants have no doubt of its truthfulness), the Company's agent was unimpeachable in this matter and the Mexican authorities were guilty of the most iniquitous practices. Galan was no ordinary witness—he had been Governor and chief justice of Lower California before his deposition was submitted to the Commission, and he had become a Senator of the Mexican Republic when, in 1877, the Mexican government entered into its contract with General Slaughter, of Alabama, and Soto's son-in-law (James Granger) for the procurement of evidence that would subvert the award. But Mr. Attorney General did not charge in his bill, and the Court of Claims did not find as a fact, that Galan had perjured himself.

And even if Galan had been impeached, this would still have left untouched *Soto's* orders, and his unlawful seizure of the Company's lower hacienda, and the imprisonment of the Company's last superintendent in the pest-house by the other local magistrate, and his final departure in fear of his life.

Take the case of *Chavarria*, who, like Galan, was a man of high position in Mexico, and whose testimony, if true (and the appellants have no doubt of its truthfulness), justified the award, and required, on the part of Mexico, either the prosecution of the prefect, Mora, for his abuse of the Company, as tesified to by Chavarria, or Chavarria's prosecution for perjury.

The late Mr. Jeremiah S. Black, who was of counsel for La Abra Company, drew the Umpire's attention to the nature of this witness' testimony, and to his high standing at the Mexican bar, as to which a distinguished Mexican judge and statesman had certified officially in this case.*

But the bill does not name Chavarria, and the Court of Claims does not find that he was foresworn. On the contrary, his testimony seems to be accepted by the court as entirely trustworthy, although (it is respectfully submitted), if its full significance had been apprehended, the decree must have been for the Company, at least to the extent designated in the dissenting opinion of the learned Chief Justice.

Referring to the weight given by the Umpire to the testimony of this notable Mexican witness, the court say (*Record*, 831):

> "In this connection it is proper to note that the Umpire, in passing upon the questions submitted to him, said, in substance, that the superintendent took such steps as he could to obtain protection from the authorities; but finding his efforts in vain, he appealed through a lawyer of high character to the highest authorities in the State, who declined to interfere in the matter."

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* *Record*, 85: "Here follows the certificate of the court, stating that lawyer Jesus Chavarria is a resident of this city (Durango), one of its first lawyers, and, by his dignity and well-known integrity, that his deposition is, beyond all doubt, entitled to full faith and credit." (See, also, *ib.*, 92.)

Dealing here with the very gist of the case, the court proceeds:

> "As applicable to that statement, the deposition of Mr. Chavarria may be referred to. By his deposition *it is shown* that some time in July or August, 1867, he was at the mines of the Company at Tayoltita, and had communication with the local authorities of Mexico, and that as a result of his being in communication with Exall at that time he was employed to solicit from the State government of Durango protection for the Company; that he made application to the authorities of the State of Durango for that purpose, but it availed nothing. The only answer given was that the government of the State would not interfere in private matters.
>
> "His deposition tends to show *that great prejudice existed in the minds of the people against the Company, and that that prejudice was participated in by the local authorities.*"

But it was not merely or chiefly in regard to "great prejudice" that Chavarria's testimony related, or was relied upon by the Umpire, although, even in that respect, the finding of the court is directly opposed to the allegations in the bill (*Record*, 16)—

> "That there was no hostility towards said defendant * * * on the part of Mexican officials or people, but that, on the contrary, their relations to its officers were friendly."

It was not only the "great prejudice" against the Company and its unsuccessful appeal to the governor of Durango for protection and redress, but also the cause of this appeal, that were proved by Chavarria. This cause was the illegal interference and oppression, taking the form of a conspiracy among the local magistrates, of which the Company was the victim in Mexico. This was pressed upon the attention of Sir Edward Thornton by Judge Black, who in his closing argument for the Com-

pany before the Umpire, referring to "the eminent Mexican lawyer," Jesus Chavarria, observed:

> "This latter witness proves an *actual agreement and conspiracy among the local authorities* to arouse the people against the Company, and eventually to drive them out of the country. Marcos Mora, the Gefe Politico, and Macario Olvera, his successor in that important office, were both engaged in the plot."

This was a remarkable statement, and it was pressed upon Sir Edward Thornton's attention by Judge Black, with characteristic clearness and vigor.

To quote again from his argument before the Umpire:

> "Here we beg your special attention to the testimony of Don Jesus *Chavarria*, who was a distinguished Mexican lawyer of character wholly unimpeachable. He explains not merely the nature and extent of the wrongs suffered by the Company, but the *animus* with which they were committed by the Mexican officials. We call the special attention of the Umpire to this evidence, which will be found on pages 90–96 of the 'Printed Book.'* *This case can not be decided against the claimant without pronouncing Chavarria a perjured man.*"

Again we inquire: Why did not the bill allege and the Court of Claims find that Chavarria was guilty of perjury? He testified that he visited the Company's mines at Tayoltita, with the Prefect Mora, in July or August, 1867, that he conversed with the Prefect upon their condition and—

> "*Became satisfied that both that officer and the mining people were strongly bent upon annoying and driving the Abra Company away, and with which they were continually provoking quarrels;* that officer and some

* This "printed book" contained the testimony on *both sides*, which had been translated and printed at great expense for the use of the Commissioners and Umpire by La Abra Company.

of the workmen stated that *they believed the Company to be annexationists; that it was therefore hateful to Mexico, and they thought it best to drive it* (a)*way from that mineral* (*district*) *anyhow;* that, for this purpose, the authorities instigated the laboring people, on the pretext of their wants, not to work for the Company; that he further knew that the Company's ores were frequently stolen, and that it was not legally protected by the Gefetura, where the superintendent usually made fruitless complaints of the thefts; that that officer (the gefe) also gave him, deponent, to understand that *he had a special interest in the expulsion and despoliation of the Company, in which case he intended to denounce the mines at Tayoltita, and he offered deponent a share in them,* which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity to the great responsibility of the authorities of that department, who, either by their connivance or indolence, compromised the honor and good name of the Republic." (*Record*, 81.)

Chavarria also testified that he met another of the officials, Macario Olvera, on the road from San Dimas to Gavilanes (*ib.*, 82)—

> "That they conversed together upon the subject referred to in the question, and *Olvera acknowledged to him the plans and intentions existing at Tayoltita, on the part of the authorities and the operatives,* to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist, and that *Olvera revealed to deponent that he was interested in that hostility, and in combination with the gefe politico* (*Prefect*) *whom he was going* to replace, to carry out the sinister projects before referred to."

Then, referring to a meeting of the Company's workmen which was held at Tayoltita during this visit, and

at which the Prefect, Mora, and the witness were present, Chavarria said (*ib.*, 82)—

> "That the greatest disorder prevailed upon that occasion; that the head miners, by order of Marcos Mora, mutined against the Abra Company and the superintendent; they refused to work any longer in the mines, which resulted in the continuance and increase of the robbery of the ores, which was openly carried on in daylight and in presence of the superintendent." *

Chavarria, who lived at Durango, and had been counsel for Mora, testified further (*ib.* 82)—

> "That, subsequent to the time referred to in the question, he conversed with Macario Olvera, in Durango, and also with Marcos Mora, on his frequent visits to him when he was in prison, and was told *that the Company had finally been compelled to abandon their mines at Tayoltita, through the loss of their property, owing to the concerted hostility against it in March of 1868.*"

The learned counsel for the Government were familiar with this testimony and that of other witnesses—many of them citizens of Mexico—corroborating it; and if they believed that it had been suborned, and that the perjury and subornation could be proved, they would have made the specific charges in the bill which the law requires in such cases.

As already observed, the Court of Claims said of Chavarria's testimony that it tended to show—

> "That great prejudice existed in the minds of the

* On this point the superintendent (Exall) testified in his first deposition before the Commission (*Record*, 32):

> "Large quantities of silver ore was taken or stolen from our mines after we had taken it out, and such were the threats against us that we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were the very richest, and those containing the largest amount of silver."

For references to the other evidence on this point see *supra*, p. 3.

people against the Company, and that that prejudice was participated in by the local authorities."

But the court said nothing of the *conspiracy* or the *overt acts* against the Company, to which Chavarria testified, and which were proved by other unimpeached testimony before the Commission. The court, however, does refer to the orders of Guadalupe Soto, the local magistrate at Tayoltita, issued by him in obedience to instructions which he had received on the 3d of June, 1867, from his superior officer, the Prefect Mora, at San Dimas. These orders were part and parcel of the scheme to drive the Company out and compel the abandonment of its property by making it impossible for it (as the Umpire found) to prosecute its enterprise with any comfort or safety at Tayoltita. Referring to these orders and the Prefect's letter of July 10, 1867, the court says (*Record*, 831):

> "In the troubles incident to the disagreement the Mexican authorities failed to protect the officers and the rights of the Company to the extent they were entitled to, but that such failure was for the purpose of driving the Company away and getting possession of the mines does not appear as alleged by the respondent."

That is, the court either discredits that part of Chavarria's testimony and the other evidence corroborating it, or differs from the United States Commissioner and the Umpire in regard to the effect which should be given to it. But the question is: Has the complainant proved that the award was obtained "by fraud, effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Company, its agents, attorneys, or assigns?" That this is the sole question submitted to the court by the jurisdictional act, and that the case is not to be tried again on the merits, the court itself repeatedly asserts; but whenever it withdraws its

attention from the act and takes up the question of fraud, it departs from its own prescribed course, and considers the probabilities of the case, upon evidence which it truly describes as voluminous and conflicting, and substitutes its own opinion—another chancellor's foot—for that of the Umpire. (*Supra*, 91, 92.)

The court calls the action of the officials a failure to protect the Company, but it was worse than that—it was an illegal aggression—a lawless usurpation on the part of these officials themselves, and its purpose was to be inferred from its nature, even if there had been no testimony as to the expressed intentions and motives of the wrongdoers. This was brought out clearly in the argument of Judge Black before the Umpire (*Record*, 746):

> "The Exhibits V, W, X and Y are admitted to be authentic documents, for they are acknowledged by the judge who issued them. The learned Mexican Commissioner does not deny their authenticity, though he questions the accuracy of the translation of them made by Mr. Tripler, the official translator of the Commission. But before any discussion of the effect of these extraordinary papers it must be considered that by the laws of Mexico the *gefe politico* had no jurisdiction or authority whatever in any matters of dispute between the operatives of a mine and the owners of the same.* The *deputacion de mineria*, established by law in every mining district, alone had jurisdiction in such cases, and the interference of the *gefe politico* or the local judge was of itself an arbitrary and illegal act."

But there is ample evidence of the expressed *animus*

*The Government offered no proof of the mining laws of Mexico in this suit, but the respondent cited those laws, in force at the time, from a recognized authority on the subject, corroborating the statement made by Judge Black in his argument before the Umpire. It should not be forgotten that Sir Edward Thornton had served for many years in Mexico, was an accomplished Spanish scholar, and, as an international judge, could take judicial notice of the laws prevailing in Mexico upon any subject before him.

and purpose of the local magistrates outside of these papers—evidence which was before the Commissioners and Umpire—and that has not only not been impeached but has been corroborated and strengthened since the Commission adjourned.

It was in evidence before the Commissioners and Umpire that *the local magistrate (Soto) who issued the orders (under instructions from the Prefect, Mora) took possession of the entire property of the company—aided and abetted by his son-in-law, Granger—upon Exall's departure,* and remained in possession for several years. Now, the court may have thought that because Granger was there with Soto the Company was in possession, but it did not seem so to the U. S. Commissioner or to the Umpire, who knew, from the testimony, that Granger remained at the mines after Exall's departure, and undertook, in Exall's name, but without the knowledge or consent of the Company, to extend for seven months the lease of the lower hacienda which Exall, before his departure, had made—as he said—to placate Soto. That Granger had business as well as family relations with Soto, and went over to the Mexican side in this case, was shown by the evidence before the Commission. Granger's letter of August 12, 1868, to the Collector of Taxes—which was not before the Umpire—was written in the interest of Soto, who was then operating the works he had erected at the lower hacienda, under an extension of the lease just mentioned. This extension was made so as to give some color of right to the intruding magistrate who had at that time taken possession of all the Company's property. Granger's statement in that letter of August 12, 1868, that the superintendent (Exall) would return in November, was false, and known to Granger to be false, because Exall had informed Granger in letters written from New York in May and June, 1868, that he had left the employment of the Com-

pany, that his accounts had not yet been settled, that he had commenced suit, and that Garth (the treasurer of the Company) had told him he was disgusted and would do nothing more. These letters, which formed a part of the "newly-discovered" evidence produced by Mexico, were attached to Mr. Attorney General's bill and made part of it, but were excluded by the court on the ground that they were written *after Exall's connection with the Company had ceased.* (*Record*, 825.) This was equivalent to a finding that Exall was not superintendent at the time when Granger so described him, and it is apparent that the whole of Granger's statement is equally untrue.

Granger's purpose in writing that letter was to put the tax collector off, and it is to be observed that it was written a few days after the unauthorized extension of the lease of the lower hacienda, where Soto was at work reducing ores from the company's mines. (*Record*, 129, 132.)

But to return to Chavarria's testimony. The plot or conspiracy, and the overt acts on the part of the local officials, to which he testified, were corroborated by other witnesses—especially by Avalos, to whose integrity and trustworthiness a leading witness for Mexico (Capt. C. B. Dahlgren) testified in the strongest terms before the Senate sub-committee in 1889.* Three depositions of

* In his deposition of September 18, 1872, before the Claims Commission, Dahlgren said, in answer to question 16th (*Record*, 99):

> "I look upon Matias Avalos as a strictly honest, truthful, and trustworthy man. I have frequently entrusted him with large amounts of silver coin, which he has always brought safely to the Company from Mazatlan, and also with bullion from San Dimas to the mint at Durango and Culiacan, and he never, as many others have done, reported a loss, which he might have done without detection or suspicion; but his reports are always candid and truthful. He is regarded as a strictly honest, conscientious, and reliable man."

In his direct examination in the Senate investigation, Dahlgren testified that the foregoing was "perfectly correct," except that he had added a particular instance of Avalos' integrity and trustworthiness. (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 667). On his cross-examination, Dahlgren testified as to Avalos that he

Avalos were before the Mixed Commission—one taken for the Company, May 23, 1870 (*Record*, 51–53), a second at the instance of the Mexican authorities, July 20, 1872, (*ib.*, 131, 132), and a third in rebuttal for the Company, September 10, 1872 (*ib.*, 93–95.)

In his first deposition, he told of a meeting of the Company's workmen at Tayoltita, evidently the one described by Chavarria, and added some other particulars, as follows (*Record*, 52):

> "At another time, I think in the month of July, 1867, when I was engaged in bringing down from the mines to the hacienda the ores belonging to La Abra Company, I met all the *barreteros* and men employed in and about the mines, going down to the hacienda, and the barreteros and all the other men stopped and talked with me, and they all said an order had been sent up to the mines by Marcos Mora, *gefe politico* of that district, to stop work, and ordering them all to Tayoltita. When I came down to the town, in the evening, the *gefe* was at the house of Gaudalupe Soto,* and *I heard the gefe, Marcos Mora, tell these men, a very large crowd of them*, that the Company did not work as he, the gefe, wanted them to work, and *employ all the men who were out of work at Tayoltita, and that he would not let any of them work if they did not employ all of them, and work all of their mines at the same time, as he had directed them to work; and he said at the same time that he was going to take the mines away from the Company, and give them to all of the people to work them as they pleased;* and that night, I remember well, I did not sleep at all, for the words used by the *gefe politico* to the crowd of miners were well intended and had

was "very reliable"—that he "never knew him to steal a sixpence or lie"—that "he was honest and brave" and "truthful." (*Ib.*, p. 711.)

* On the Company's ground close to the mill, where this local magistrate kept a liquor store and gambling saloon, at which the miners were wont to congregate. (*Record*, 498, 499.)

> the effect to incite the Mexican miners and men out of employment to riot, and perhaps to something much worse than that, and I expected serious trouble that night for the Company."

The testimony of Avalos was, of course, not satisfactory to the Mexican authorities, and they haled him into court at San Dimas, and, by methods such as Señor Galan described in his deposition, sought to obtain a retraction of his statement; and they forwarded to the Mixed Commission, through the Mexican agent at Washington, an alleged copy of his re-examination (*Record*, 131, 132). In a later deposition, taken before United States Consul Sisson at Mazatlan, Avalos reasserted the truth of his original testimony for the Company, and swore that he did "not wish to make the slightest alteration in it." At the time that he made this last deposition of his, he was in the service of Captain Chas. B. Dahlgren, and had come with him from San Dimas to Mazatlan. Dahlgren signed this deposition as subscribing witness, and, as already observed, himself testified, seventeen years later, before the Senate Investigating Committee, to the honesty, courage, and truthfulness of Avalos.

It is significant that when Avalos was re-examined by the Mexican authorities, they did not ask him any question about the occupancy of the Company's premises by the local magistrate, Guadalupe Soto, although he had testified, in answer to question No. 4 in his original deposition, that at that time (May 23, 1870) Soto and his family were occupying the Company's hacienda and property. (*Record*, 52.)

There can be no doubt that the testimony of Avalos, vouched for as he was to the Commission by Captain Dahlgren and by the captain's predecessor, Mr. Ralph Martin,* had great weight with the Umpire. But in-

* Ralph Martin, who preceded Dahlgren as superintendent of the

stead of having been impeached or weakened in the intervening decades, the testimony of Avalos has received additional importance from Dahlgren's renewed encomiums on its author in his examination under oath by the Senate committee.

Why did not the complainant in the bill charge Adams with having bribed Avalos to commit perjury? Was it because the agents of the Mexican Government, before the bill was drawn, had been compelled in the Senate investigation to withdraw certain infamous charges which they had made against General Adams as an officer of the United States army in the Mexican war and in the war of the rebellion? Or was it because their witness, Dahlgren, whose deposition for the Company they said had been *forged* by General Adams, broke down so thoroughly on his cross-examination, in the same proceedings, and was contradicted by one of the men (Danglada)—a Mexican at that—who saw him sign his deposition in the United States consulate at Mazatlan after it had been read to him and when it was fully written out?*

The charges of fraud and corruption in obtaining the testimony were made with far more definiteness by the Mexican agent before the International Commission than by Mr. Attorney General in this suit. (*Record*, 412, 413; *Supra*, 7, 8, 128, 129.)

Durango Mining Company at San Dimas, and who had employed Avalos said of him that "he was an honest, reliable man, of good, character for truth," and "was regarded there (as deponent believed) by all who knew him as an honest, industrious, and reliable man." (*Record*, 164, 165.)

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*The account of Dahlgren's examination contained in the minority report of the Senate Foreign Relations Committee, No. 2705, part 2, Sen., 50th Cong., 2d Sess., is printed in appendix III to this argument. The majority report does not mention the subject at all, although it is of such consequence in the case.

And these charges were found false by the Commission when the Umpire agreed with the United States Commissioner that the Company was entitled to an award. But we can not tell on what grounds the Court of Claims differs from the Commission on this question, because the court does not state any specific conclusion as to the witnesses or the testimony for the Company with respect to this question of fraud—the sole question which was submitted for determination to the court by the jurisdictional act. For example: Was Cryder's testimony regarding Exall's imprisonment true or false? Mexico's witnesses—Sloan and Fonseca—corroborated it. So did the entry of the fine in one of the Company's books—*produced by Mexico*—in this suit. Was the testimony of Galan, Chavarria, Avalos—any of the testimony without which the Umpire could not have made his award—perjured and suborned, as alleged in the bill? If the testimony on which the Umpire relied was suborned, who suborned it? The subornation must be brought home to the Company, "its agents, attorneys, or assigns."

Adams, Granger and Slaughter.

But the court say (*Record*, 825):

> "The evidence for the respondent which was submitted to the Joint Commission was taken by Alonzo W. Adams, who was employed by the Company after it was decided to prosecute the claim, under a contract that he was to receive, as a contingent compensation, one-third of the amount awarded by the Commission, and the books and evidence in the possession of Granger, who had been an employee of the Company, were procured by Mexico under a contract that Granger was to be paid the sum of $3,500 in case the claim was ultimately defeated.

> This condition being alike to both sides, the testimony comes before the court in at least a 'questionable shape.' It is insisted by counsel for the complainant that Adams, having the incentive of a large contingent compensation, was unscrupulous in his method and means of procuring testimony, while, upon the other side, it is insisted by counsel for the Company that Granger had every inducement to withhold testimony in favor of the Company and mutilate the books which he produced under his contract for contingent compensation.
>
> "Whatever may be said as to the manner in which either performed his duty toward his employer, it may be said that the terms of the employment were not calculated to induce the most scrupulous means of investigation; and, without criticism in detail, it may be said that *neither the agent of the Company nor the Mexican agents are without grounds of suspicion.*"

Is this such a finding of the fraud defined in the jurisdictional act, in respect to the man who was charged with committing it, as would justify the subversion of an international award more than a quarter of a century after the happening of the events in controversy? What becomes of the old rule of equity, that the fraud for which relief may be obtained against a final judgment must be such fraud as can be defined in the decree? Or of the other old rule, that the fraud must not have been in issue or triable before? The charges of fraud against Adams—not made in the bill—but in argument by counsel, so far as they touched the substance of the material evidence, or the manner in which it was obtained, were examined and finally determined by the Commission, as already shown. The court should, at least, have attempted to reverse the Umpire on this point—to justify its decree—and not have contented itself with putting Adams and "the Mexican agents" in the same category.

But the court erred otherwise in this matter. It is a serious error to say, as the court said (*supra*), that—

> "The evidence for the respondent which was submitted to the Joint Commission was taken by Alonzo W. Adams."

The deposition of Mr. Collins, president of the Company, on which the Umpire relied for the amount of the Company's expenditures, was not taken by Adams. Nor was Exall's—the first deposition in the case. This appears from the notice of Exall's examination which was sent to Mr. Cushing (the agent for Mexico) by Messrs. Britton & Ely, the Company's New York attorneys, Nov. 30, 1869. (*Record*, 667, 668.) One of the Company's Washington attorneys, the late Mr. Robert Rose, had several interviews with Exall, in New York, prior to his examination. Greene also was examined in New York. It was in *Mexico* that Adams obtained evidence for the Company in two separate visits—the first in 1870 and the second in 1872. He travelled with an interpreter, Lieut. Col. Francis Dana, and a military escort, and where the Mexican judges would examine his witnesses he examined them in the Mexican courts. Chavarria was examined in court at Durango, and his credibility and high standing at the bar and in the community were officially certified to by the presiding justice (*supra*). General Adams did everything above board as attorney in fact for the Company—he filed his power of attorney in the proper offices, and cited his witnesses before the judges for examination according to local procedure. (*Record*, 28, 76, 79, 91.)

Nor is it to be forgotten that much of the testimony on which the Umpire relied was furnished by the Mexican government, under the management of the Federal District Attorney Hernandez. The instructions of that official to the local judges were before the Commission. (*Rec-*

ord, 121–124.) He furnished Judge Quiros, before whom so many of Mexico's witnesses were examined, and who, himself, had been one of the most violent enemies of the Company, with a copy of Prefect Mora's order of June 3, 1867, and instructed him to examine that official and also Soto. But, although Soto was examined, Mora's testimony was not taken, by the Mexican government, and it was taken for the Company before Mr. Justice Barraza, on Adams' petition, in court, at Durango, on his second visit. The excuse given by Judge Quiros that Mora could not be found was, at least, "questionable," for General Adams found him in Durango—where Hernandez, the Federal district attorney, lived—and brought him into court by process of law. The parallel between Adams and Granger, suggested by the court, is only on the surface. Both were employed, as the court suggests, on a contingent compensation. But Adams was employed by a company whose only available property was the claim it had against the Mexican government, and there was nothing unlawful or improper in his employment to obtain evidence in Mexico, where the wrongs from which the Company had suffered were perpetrated. He did this legitimate work in the open, and went a second time to Mexico with instructions from the late Jeremiah S. Black—a jurist of renown—a good man—whose memory is precious to this court—a man who had been Attorney-General and Secretary of State of the United States, Chief Justice of his own great Commonwealth of Pennsylvania, and who was aided by other counsel for the Company, one of whom (Mr. Fred. P. Stanton) had been chairman of the Judiciary Committee of the House of Representatives and Governor of the State of Kansas. (*Record*, 658.) But Granger was employed by a debtor government to subvert an international award, in face of the solemn covenants of a treaty,

when it was known that he was "a very dangerous man;" that he had changed sides, and had forsworn himself, and was in straitened circumstances. (*Record*, 591.) And although the Company's books and papers, which were in his control in Mexico, could have been examined, and their money value appraised beforehand, the Mexican government made no previous examination of the documents, took no affidavit from their vendor as to their authenticity, completeness, or history during the decade that had elapsed since they were left at Tayoltita, and insisted on making the great bulk of his compensation dependent upon the entire subversion of the award by their instrumentality. (*Record*, 590.) There never was such an offense committed against arbitration and the peace of nations, or such a breach of diplomatic propriety and international morality as the contract between the Mexican government and Granger, except the contract between the Mexican government and Slaughter in this same case. When it was said of the Slaughter contract in the Senate of the United States (*Record*, 435) that—

> "There is not a respectable chancellor of the English-speaking race in Christendom, who, if such a contract as that were to appear at the bar of his court, would not throw out any case that came there with it"—

the distinguished jurist who used that language did not know that the means employed by that agent of Mexico, under that contract, were worthy of the contract itself—that the so-called "petition" of his which was prepared for him, and circulated privately among the members of Congress while the fifth section of the act of June 18, 1878, was under debate, was unverified—that it had never been presented in either House, that it concealed his contingent interest under his contract with Mexico, and that while it purported to tell "The Story

of the Mines" from the letter-book and the original letters, that Granger had produced, it garbled the records, giving what suited its purpose, and suppressing what supported the Company's claim.* The Slaughter contract was produced in 1889 before the sub-committee of the Senate Committee on Foreign Relations, but the

*After a series of misstatements, Slaughter says in his so-called "petition" (*Record*, 759):

"Your *petitioner* further shows—

"That he is now in possession of *original books* and reports of the said Company, and other papers covering the entire period of its operations and extending some months beyond the abandonment of the mines, from which a few extracts are hereto appended, marked Exhibit B."

Exhibit B is entitled "*The Story of the Mine*" (*Record*, 761), and is introduced as follows (*ib.*):

"*Your petitioner hereby tenders the proof of fraud to Congress and* prays that a thorough and impartial investigation of these claims may be had," *etc.*

In a foot note (*ib.*, 774), he omits a draft of $15,000 made by De Lagnel in May, 1867, which was paid by Garth in New York.

He omits De Lagnel's last letter from the mines to Garth, doubtless because "the story" did not suit his purpose. *This* "story of the mine," told by Mexico's chief witness, in the letter-book, and suppressed by "the petitioner," was (*ib.*, 262)—"*The mines are looking better, yielding more,* and I believe, *richer metal.*" The "petitioner" gives most of Exall's letter of July 13, 1867, but suppresses its continuation, written next day, in which Exall says (*ib.*, 272):

"*The officials are getting daily more troublesome; their demands are all foolish and very unjust,* but we have to do the best we can with them and take things as quietly as possible."

That was "the true story of the mine," but the "petitioner" had no more idea of telling it to Congress than of making an exhibit of his contract with the Mexican Government.

The "petitioner" also omits Exall's two letters of December 5, 1867, one to the Prefect and the other to Del Valle, complaining of *the illegal seizure of the Company's Guadalupe hacienda by Soto, one of the two local magistrates.* (*Record*, 278, 279.)

The "petitioner" also omits Exall's appeal of January 7, 1868, to the same Prefect for protection against the other local magistrate (Perez), who had illegally arrested him, and had threatened to shoot him (*ib.*, 280,281), and who, the next day, imprisoned him in a pest house.

It has already been noticed that this garbled and fraudulent statement of Mexico's "petitioner" was officially communicated to Mr. Evarts by Mr. Zamacona as "a printed extract containing a portion of the evidence which [Mr. Zamacona said] shows the fraudulent character of the claims in question." (*Supra*, 15, 16, and *note.*)

Granger contract was never disclosed till Gaona, the Mexican official who made it, under instructions from the Mexican Minister of Foreign Affairs, was examined in this suit.

Mexico's Failure to Prosecute the Alleged Perjurers.

The conduct of Adams as agent of the Company in Mexico was subjected to careful scrutiny upon testimony pro and con, and was judicially vindicated by a court of final and exclusive jurisdiction, organized under a convention between two nations. But Mexico's conduct, or that of her agents in this case, has received no judicial vindication, and is beyond apology or excuse. It can only be said that she is not on trial in these proceedings. But she is, or ought to be, for she has appealed to the United States in the name of honor and justice for relief from a pecuniary obligation, and, by her sponsor, she has come into equity to get back money, on the ground that the award against her was obtained by perjury, when the chief of the alleged perjurers—her own citizens, resident in her territory, and subject to her laws—have never been put upon trial in her courts, although there has been no impediment in the way of their conviction if guilty. (*Record*, 595, 596.) It would be in the highest degree impolitic and immoral to set aside the award under these circumstances. Mexico owed it to herself and the United States and the family of nations to prosecute the alleged perjurers who were within her jurisdiction, and she should have based her appeal, as the Umpire suggested, upon judicial proof of the alleged perjury. (*Supra*, 129.)

Mexico dishonors herself in making the charge, and

she is not to be believed, in the absence of such proof. An award, under a submission by individuals, whether the agreement was merely between the parties or made a rule of court, would not be opened upon such a charge of perjury. A case in point is cited by MORSE on *Arbitration and Award*, p. 615, as follows:

> "The allegation that a witness had wilfully given corrupt and false testimony before the arbitrator was once refused to be treated as a sufficient basis for a motion to set aside the award. For, it was said, the witness might be proceeded against for perjury, and *it would be setting a mischievous example* to interfere at that time."

That is, before the plaintiff had done his duty to the public, and had obtained judicial proof of the alleged perjury. In the case cited (*Scales* v. *East London Water Works*, 1 Hodges, 91), it seemed clear that there had been perjury, but in denying the motion, TINDAL, C. J., said:

> "At this moment, if the witness has forsworn himself, the plaintiff is not without remedy against him, but it would be setting a mischievous example to interfere at present."

PARK, J., said that by the late act proceedings might be taken against the witness for perjury, and the rest of the court concurred.

In a much earlier case, *Tovey* v. *Young*, Prec. in Ch., 193, the bill for a new trial at law was dismissed, though the plaintiff had discovered since the original trial, that the principal witness against him was interested, and the Lord Keeper said:

> "New matter may in some cases be ground for relief, but it must not be what was tried before; nor when it consists in swearing only, will I ever grant a new trial, unless it appears by deed or writing, or that a witness, on whose testimony the verdict was given, *was convicted of perjury*."

This case is cited by Chancellor KENT in the leading case of *Smith* v. *Lowry*, 1 Johns. Ch., 324.

The excuse that Gaona gave for the failure to prosecute Galan, *i. e.*, that he had been chosen Federal Senator and that the consent of the Senate was necessary, puts Mexico in a worse position, for, of course, if the Mexican government had believed that Galan had perjured his soul and betrayed his country in an international arbitration, it would have laid the proof before the Senate and that body would undoubtedly have given its consent to the trial. But the trouble was that Galan's testimony was true. He gave the names of his friends, the governor and other officials, who had such strange ideas of patriotism (*Record*, 188), and the presumption is that the Mexican government made inquiries of them, but they neither examined them in rebuttal nor prosecuted Galan. Chavarria was not a Senator, and no excuse is given for the failure to re-examine him (as Granger, Del Valle, and Avalos were re-examined) or to prosecute him for perjury after he had testified for the Company.

Failure of the Government to Produce the Witnesses Named in the Bill.

Now we come to the XVIth paragraph of the bill, to which the court refers as a further extension of the general allegations of fraud contained in paragraph XV. (*Record*, 15–18; 330–333.) But it will be seen on examination that this paragraph also is fatally defective as a charge of fraud for want of the necessary definiteness and circumstantiality. It is, in the main, a statement of what the Government undertakes to prove, and of the evidence by which such proof will be made, on the rehearing. There are thirty of these specifications, the falsity or immateriality of which was so clearly demon-

strated below, that the court felt bound to refer again and again to the XVth paragraph as raising the issue of fraud in the case. But this it utterly fails to do, as hereinbefore shown, on the highest authority.

Before specifying the facts, which it promises to prove, the Government declares, in paragraph XVI, (*Record*, 16):

> "That Charles B. Dahlgren, J. F. Gamboa, and J. M. Loaiza can and *will* testify that the affidavits purporting to have been made by them in support of said claim were false and were obtained by fraudulent practices."

But, despite the legal obligation to prove the fraud as alleged in the bill, Mr. Attorney-General did not put one of these witnesses on the stand, although, for aught that appeared, they were every one of them alive and accessible. Indeed, it appears in Birmingham's testimony (*Record*, 740) that he had met Dahlgren and conversed with him several times in New York while this suit was pending; and Torres testified (*Record*, 556) that he believed that Loaiza was still living at La Noria; while Gaona admitted (*Record*, 580) that he was informed as to the residence of one of the Gamboas.

This breakdown on the part of the complainant is all the more significant when the grave character of the charges made by the Mexican government on faith of alleged statements of these persons is considered. Affidavits of Loaiza and the two Gamboas are comprised in the so-called "newly-discovered evidence," which was used in the Department of State and in Congress to discredit the award, and are made part of the bill in this suit. (*Record*, 290–295.) Their falsity was shown from their own contents in the argument on the demurrer, and the complainant was afraid to produce

the affiants for examination, as promised by the bill, in the trial on the merits. As to Dahlgren, whose deposition for the Company was alleged—prior to this suit—to have been *forged*, his testimony, with that of Sisson and Danglada, before the Senate sub-committee in 1889, showed so conclusively that he had signed and sworn to his deposition after it had been fully written out and read to him, and made his subsequent perjury on Mexico's behalf so clear, that it is easy to see why, when the time came to examine him in this suit, the Government did not dare to produce him. An account of his examination, taken from Senator Brown's minority report, is printed in Appendix III to this Argument, and respectfully submitted to the consideration of the court, as an illustration of the manner in which the Mexican government and its agents in the United States attempted to subvert an international award, in the name of honor and justice, more than twenty years after the original cause of action arose.

Recurring to the affidavits of Loaiza and the Gamboas, it is to be observed that *they show on their face that the affiants were within Mexican jurisdiction all the time from May, 1870, when they were examined on behalf of La Abra Company, and another claimant, at Mazatlan, until June, 1877, when* this "newly-discovered evidence" was extorted from them by the Mexican authorities after the final adjournment of the Commission.

It appears from Galan's testimony (*Record*, 188–191), that these very witnesses were threatened with punishment by Governor Rubi for having testified in support of claims against Mexico, but no attempt was made to make them disavow or contradict their testimony while the Commission was in session, probably because it was apprehended that (as in the case of Avalos), they would be re-examined by the Company, and disclose (as Avalos

did) to the Commissioners and Umpire the fraud and duress by which the contradictory testimony had been obtained by executive and judicial officers of the Mexican government. So Mexico waited *seven years*, until the Commission was *functus officio*, and then, instead of coming into equity with judicial proof of the alleged perjury of her own citizens, came with false and fraudulent depositions, which were wrung from the witnesses in jail. (*Record*, 579, 580, 596.)

J. F. Gamboa says in this deposition of his, which was made seven years after his testimony for the Company before the Commission (*Record*, 292):

> "He received from Adams only $50 to go on his account to Cabazan and procure two false witnesses to testify on behalf of said claim, which deponent did *not* do."

Trinidad Gamboa says in his deposition (*Record*, 293):

> "Adams gave his brother, at San Ignacio, $50 to go to Cabazan and procure two false witnesses to testify in the same way, *but his brother did not do it.*"

The Umpire's award could not be set aside because General Adams had spent $50 in an unsuccessful attempt to obtain the testimony of "two false witnesses." But who were those false witnesses? Why were their names not given? What where they to testify? Where and before whom were they to be examined? And why was Gamboa to go to *Cabazan?* Did General Adams leave a matter of this sort to the memory and discretion of his messenger? And had his messenger forgotten all the necessary particulars? The story is not explicit enough, considering the time taken to concoct it, and it is not strange that the complainant did not produce the deponent for cross-examination in this suit.

General Adams was collecting evidence in Mexico under great difficulties (*Record*, 179, 180), and if he employed Gamboa to go to Cabazan, it was doubtless to look up some of the Company's former employees whose testimony he desired to obtain in support of the Company's claim.

General Adams died many years before this suit was brought, and prior to the Senate investigation of 1888–'89, but in 1874, after his return from Mexico, he answered under oath before the Commission the charges of fraud that had been made against him (*Record*, 177–186), and after his death his friends produced such incontestible proof of the falseness of certain later charges made against him by Mexico's agents in "Mexico's Case," affecting his conduct as an officer in the Mexican war and the war of the rebellion, that counsel for the Mexican government felt constrained to withdraw them, with an expression of regret that they had ever been made.*

The falseness of this "newly discovered evidence" can readily be shown by comparing the statements in the different depositions as to the same fact.

J. F. Gamboa says in his deposition (*Record*, 292, near the foot of the page) that *Loaiza* "received $100 at the same time that deponent and his brother Trinidad received the $200 in Machado's Square." But Loaiza says in his deposition (*Record*, 295) that Adams promised "to defray his *traveling expenses* and pay him $180 *due him on his salary* (he had formerly been employed by the company) if he would go from San Ignacio to Mazatlan, and give his testimony before the United States consul there, but that although "deponent remained in Mazatlan, after that, eight or ten days, all they gave him for

* See appendix V to this argument for an extract from Mr. Lines' testimony in the Senate investigation.

his expenses was *sixty or seventy dollars*, and *they did not pay him what they owed him on his salary as promised.*"

Now, who was it that testified falsely in this matter—Loaiza or J. F. Gamboa? Trinidad Gamboa was not a witness for the Company before the Commission. It appears from these depositions of both the Gamboas that what they received from Adams was for their traveling expenses and services, although J. F. Gamboa says, doubtless for the purpose of suggesting his own subornation, "that he agreed to go to Mazatlan to testify in consideration of the compensation promised, and lost no time in coming to an agreement with Adams in that respect." It also appears that these witnesses were employed and examined on behalf of other claimants for whom Adams was acting as attorney in Mexico (*Record*, 189, answer to question 12), and that the question whether his relations and dealings with them were proper or not was in issue on the evidence before the Commission. (*Ib.*, 190, 191.)

Even if Gamboa's original testimony had been material or of weight in the estimation of the Umpire, the award could not be opened on his affidavit, for, as held by all the judges in *Pilmore v. Hood* (8 Scott, 180), a witness who had changed sides like that is not to be believed. In that case it was admittedly on the affiant's original testimony that the arbitrator had made his award, but in this case the original depositions of J. F. Gamboa, Loaiza, and Dahlgren, being largely hearsay, could be struck from the record without weakening the Company's case.*

* It is very significant that instead of re-examining the witnesses whose testimony justified the award—Chavarria, Galan, Clark, Green, Cole, Cryder, Mora—all residing in Mexico prior and subsequent to the Umpire's decision, or putting them on trial for perjury, or trying to impeach the genuineness of Mora's and Soto's orders of ejectment, the Mexican government should have made her appeal to the honor of the United States on such depositions as these, and *then have failed to produce the deponents in court.*

Another proof of the falsity of this "newly-discovered evidence" appears in Mr. Sisson's testimony in this suit. It was before him, as Commercial Agent for the United States at Mazatlan, that Loaiza's and J. F. Gamboa's original testimony for the Company was taken. In their later depositions these witnesses say that they were under the influence of liquor when they were sworn by Mr. Sisson.

Loaiza says he was—

> "a little intoxicated—a habit he used to indulge in at that time but from which he has been entirely cured for the last five years, as it is public and notorious in this village"—

and J. F. Gamboa says that—

> "He does not know whether the translation read to him by the court contains literally the words of the (original) deposition which he confesses to have signed, and of which he has not at present the least idea, *owing to the state of intoxication he was in when he signed it.*"

He also says that—

> "*The deposition* did not *then* seem to him false, because *he thought it had no authenticity if the state deponent was in was taken into consideration.*" (*Record*, 292).

That is, he reasoned while he was drunk that his deposition would be null and void on account of his drunkenness. He also says that while he was drunk he at first refused to sign the deposition, but that on account of the urgent entreaties of Messrs. Alonzo W. Adams, James

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But it is more surprising still that in the absence of judicial proof of perjury which, under the circumstances, Mexico was bound to furnish and the United States to exact, and in face of such contracts as the Mexican government made with Slaughter and Granger for the subversion of the award, the solemn covenants of the treaty, and the adjudicated rights of American citizens have been held for naught so long.

Granger, and Charles T. Galan, "he resolved at last to sign it."

In this suit Mr. Sisson was examined as to the truth of the certificate attached to each of the original depositions of these men—the originals (in Spanish) having been brought from the Department of State by one of its employees—and as to the condition of Gamboa and Loaiza when they were sworn. Mr. Sisson having testified to the truth of the certificate in each case, his examination was continued as follows (*Record*, 688, 689):

"Question. Now, I want to invite your attention to the eleventh paragraph of the bill of complaint of the United States in the case in which you are now testifying, and especially to the part that I will read: 'And the said Republic of Mexico in the month of June, 1877, procured from the said J. M. Loaiza an affidavit stating that the affidavit made by him in May, 1870, in support of said claim, was false, and that the same had been made when affiant was intoxicated and under the persuasion of said Adams.' Now, I want to ask you if there is any truth in the statement that Loaiza's deposition was made when he was intoxicated?

"Answer. No, sir; he was not intoxicated when he made that deposition in the consulate.

"Question. Did you ever, in all the course of your consular office, take the deposition of a man who was under the influence of liquor?

"Answer. No, sir.

"Question. [After reading from J. F. Gamboa's affidavit.] What have you to say in regard to the truth or falsity of that statement?

"Answer. I say he was not intoxicated when he was examined and signed that deposition.

"Question. What have you to say in regard to suggestions and repeated offers to him to sign it?

"Answer. No such thing in my presence or hearing.

"Question. Was the deposition signed and sworn to in your presence?

"Answer. Yes, sir.

"Question. Is it true it was read to him in Spanish, as he alleges here?

"Answer. Yes, sir."

The appellants are not content simply to have these perjured depositions thrown out of the case because of the failure of the Government to produce the deponents for cross-examination in this suit, but beg the court to consider what it really was that Mexico and her agents in this country undertook to do in respect to these original witnesses for the company—Gamboa, Loaiza, and Dahlgren—and why they finally drew back at the crisis.

What was the purpose of producing these affidavits and making the averments in the bill? It was to show what could and would be proved by the complainant in this suit. The Court of Claims, sitting, as it said, "in the exercise of equity powers," should have applied the rule in equity in this case. *

But if *all* the fraud charged in the bill does not need to be proved, and it would suffice if a material part of it is made out by that conclusive kind of proof required in such cases, nevertheless, when it appears that charges of such gravity are wantonly made—especially if the moving affidavits are themselves perjured or open to just suspicion, and the affiants are not even produced as promised at the trial—then all the complainant's other proofs should be regarded with suspicion and subjected to the strictest scrutiny of the court.

* In setting aside a lease for concealment and misrepresentation, *the very fraud alleged by the bill must be proved. Donegal* v. *Gray*, 13 Ir. Eq. R. 12, cited in CHITTY'S *Equity Index*, vol. III, 2624.

If the bill alleges a case of fraud, and the title to relief rests upon that fraud alone, the bill will be dismissed if the fraud *as alleged* is not proved. (KERR on *Fraud and Mistake*, Bump's ed., 383.)

The next promise of the Government to prove fraud by witnesses designated in the XVIth paragraph of the bill is this—

> "That Frederick Sundell, A. B. Elder, Ramon Hermosillo, Eugenio Somero, and Francisco Torres can and will testify that the material allegations of the said memorial, and the material testimony submitted by said defendant company in support of said claim are false." (*Record*, 16.)

But as to the first part of this citation, it may be said that it is not the material allegations in the Company's *memorial* that are in issue here. The only question submitted by the jurisdictional act to the court is—

> "Whether the *award* made by the * * * Commission, in respect to the claim of the said La Abra * * * Company *was obtained* as to the whole sum included therein, or as to any part thereof, by FRAUD *effectuated* by means of false swearing or other false and fraudulent practices on the part of the said La Abra * * * Company, or its agents, attorneys, or assigns."

This requires the court to ascertain what *evidence* it was on which the Umpire relied in making his award, and to determine whether *that evidence* consisted of "false swearing," and was obtained by false and fraudulent practices on the part of the Company, its agents, attorneys, or assigns. The Umpire did not rely upon the "memorial," but upon certain parts of the evidence in making his award. He did not accept the measure of damages set up in the memorial, and he did not allow one quarter of the amount which it claimed. The majority of the Court of Claims erred in the opinion that "the memorial before the Mixed Commission * * * is the foundation upon which this proceeding is based" (*Record*, 818), and that the Company is here "asserting the original averments of the memorial." (*Ib.*, 841.) The

memorial asserts that at the time of the abandonment of the mines "the Company were obliged to abandon 1,000 tons of silver ore already extracted, worth $500,000." The Umpire allowed only one-fifth of that amount, and the Company accepts that allowance as sufficient. The Company is certainly not asserting in this suit the original claim as presented to the Commission. It is here defending the Umpire's award. The memorial alleged that the mines, with the buildings and other permanent structures, were worth $1,000,000, and that if the Company had not been driven out it could have made that amount in clear annual profits. But the Umpire allowed only what the Company had actually spent, plus an allowance of $100,000 for the ore on the "patio," and the Company is concluded by the award. The Company does not here assert those original averments nor did they have weight with the Umpire. What the Company does assert is that the evidence which tended to fix on the Mexican authorities the responsibility for the Company's abandonment of its property is true, and that it was properly obtained. This, however, the Company does not need to prove, for the award imports verity, and the burden of proof is with the complainant.

The dissenting opinion criticises the manner in which the *memorial* was used by the Government in this suit. On this point the learned Chief Justice said (*Record*, 846):

> "The claimants before the International Commission set up a wildly exaggerated demand for $3,000,030, and their witnesses testified in much the same way; and on the argument before this court the case has been treated much as if the Umpire had allowed what these exaggerated statements called for.* *But such is not the award which is now*

* It will be seen, by a stipulation printed *infra*, p. —, what wonderful results have been obtained by tunnelling the Candelaria

the subject of consideration. The Umpire rejected all conjectural damages and reduced his award to the following five items" (*vide* the whole passage).

"The material allegations of the said memorial" and "the material testimony submitted by said defendant Company," which were to be proved false by Sundell, Elder, Hermosillo, Somero, and Torres, should have been designated in the bill. In view of the measure of damages adopted by the Umpire, could it be said that the alleged value of the mines or the income it was claimed they would have yielded, were "material allegations of the said memorial?" Was the testimony on these points—largely, of course, matter of opinion, on which honest men might differ—part of "the material testimony" submitted to the Commission? Be the meaning of the complainant's averment what it may, the fact is that neither Elder, Hermosillo, nor Somero was produced as a witness in this suit. The failure to produce Elder is especially significant, for he was employed by the Company as foreman at the mill from the latter part of De Lagnel's superintendency, in the spring of 1867, until December of that year—about three months prior to Exall's abandonment of the Company's property. An account of his examination in the Senate, printed in Appendix IV to this argument, will, it is believed, explain the failure of the complainant to produce him as a witness in this suit. One of the most infamous of the charges made by Mexico's agents against the Company was proved by this man—a witness for Mexico in the Senate examination—to be utterly false and without color or excuse.

The other two witnesses—Sundell and Torres—were

mines at San Dimas below the old workings. Two of the estimates of the value of La Abra Company's mines were expressly based upon their development in this way (*Record*, 47, 75), and all of the estimates may have had this in view.

examined orally in this suit by the complainant's counsel in San Francisco, and upon cross-interrogatories in writing, prepared for the Company in Washington. These two, then, are the only witnesses of the five mentioned in this specification who appeared to testify to what the Government had therein pledged itself to prove.

Before examining their testimony, it should be observed that a fact of great importance was established by Hermosillo and Somero in the Senate investigation—two of the witnesses whom the complainant has failed to produce in this suit—viz., that, after the abandonment of its property by the Company, a tunnel was commenced to reach the veins under the old workings of La Abra mine by Ignacio Manjarres, one of the most experienced miners in Mexico, and that he continued the work "perhaps ten years," and was still at it when he died, after having spent some $60,000 or $70,000 on the undertaking. (Report No. 2705, Sen., 50th Cong., 2d Sess., 532–546.) This proof that one of the best judges of such property in Mexico was so firmly convinced of the undeveloped resources of this particular mine was not known to the Commission, for, although this same Manjarres was examined as a witness for the Mexican government while the Commission was in session, it was not until long after the award was rendered that he commenced to tunnel La Abra. It also appeared from Somero's testimony in the Senate investigation that he himself was one of several Mexicans who "denounced" and worked the Company's mines after Exall's departure, thus contradicting the idea so industriously promoted by Mexico's agents that these mines were not thought to be valuable by the magistrates or people of the vicinage. The idea that the Company's mines were rich, and that Mexicans—not "Gringos"—should own these Mexican mines was undoubtedly prevalent.

Returning now to Sundell and Torres, who, according to the bill, were to prove the falseness of the Company's claim, it has already been observed that, according to equity practice, their testimony was not admissible in support of such a vague and general allegation. But the Company's demurrer—one of the grounds of which was that fraud had not been properly pleaded—having been overruled, and these witnesses having been examined, some attention may now be given to their testimony.

Testimony of Frederick Sundell.

From 1865 to 1868, inclusive, Sundell was employed as assayer by the Durango Company at San Dimas while La Abra Company was in operation at Tayoltita, about 15 miles distant. With the exception of the time from January, '69 to October, '71, he remained at San Dimas until 1877, when on August 9th of that year he was examined *ex parte*, at Mazatlan, and his deposition makes part of the so-called "newly-discovered evidence" comprised in Exhibit B of the bill. (*Record*, 296–303.) There are two versions of this deposition—one consisting of oral answers to interrogatories in Spanish, of which there is a "translation," (*ib.*, 296–300), and the other consisting of answers written in English by the deponent. (*Ib.*, 301–303.) This duplication is explained as follows (*ib.*, 300):

> "He also stated that for the better understanding of the facts related in this deposition, they presented him a translation into English of the interrogatory of the district attorney [Gaona], and deponent wrote an answer to each one of the points contained therein, which he signed with his own hand, and can be appended to these documents, as he has gone more into details."

These papers were put into his hands at his examination in this suit (October 2, 1894), and he was examined as to their contents, and gave substantially the same explanation of their duplication. (*Record*, 517, 518.) In this examination he corrected two alleged errors in those depositions, one of which was that he "was at Mazatlan from 1865 to the end of 1868," whereas in fact he had "lived in San Dimas without interruption the whole time in the years referred to." (*Record*, 518.) The other correction was to the effect that instead of stating he had never visited the mines or works of La Abra Company, he stated that he had "*never visited the mines or the workings in the mines.*" (*Record*, 518, Ans. to Q. 20.)

He was then asked—

> "Are those all the errors that you have discovered in the translation as it appears in the exhibits to the bill?"

To which he answered:

> "Yes, sir, that is all.
>
> "Q. 22. With those exceptions, then, the document appearing on pages 332 to 340 in the exhibits to the bill, embodies a correct translation of the deposition given by you in the month of August, 1877?
>
> "A. Yes, sir." (*Record*, 518.)

It was under *Granger's* auspices, and after consultation with him, that Sundell was examined at Mazatlan in 1877. (*Record*, 545, answers to cross-questions 49 and 50.) Meanwhile (and shortly afterwards), Granger had made his contract with the Mexican government as set forth in District Attorney Gaona's testimony (*Record*, 571, 572), and it had become important for the Mexican government and its agents here to convey the impression that Granger remained at Tayoltita *as superintendent for the Company*, after Exall's departure, and

not as son-in-law and confederate of the local magistrate, Soto. It was Sundell who had translated "Exall's autograph" of February 26, 1868, into Spanish for Granger's use, and which (although it was used in and out of court at San Dimas before and during the session of the Commission), has been relied upon since 1878 to show that Granger was the *Company's* superintendent, and that his possession or control of the Company's property at Tayoltita after Exall left, was the Company's possession or control, and that such possession or control continued at least to August 12, 1868, the date of Granger's letter to the collector of taxes. This theory—which is really the gist of Mexico's case—is more particularly discussed elsewhere, but sufficient has now been said to show the importance of the question, whether Granger was regarded as the Company's superintendent after Exall left; that is, in charge of the Company's property and business, by its appointment, or at all events, with its knowledge and consent. The subject of Granger's relations to Exall and to the Company was brought directly to Sundell's attention in his examination at Mazatlan by the 28th interrogatory, in which he was requested—

> "To state * * * whether he recognizes as his the enclosed translation, which will be shown to him, and whether he remembers precisely that he made said translation faithfully from the original signed by Charles H. Exall. (*Record*, 297, foot of the page.)

To which he replied (*Record*, 300):

> "As regards the 28th point, he says that he acknowledges as his the translation referred to, made from the original, about which the court of the first instance of San Dimas took some legal steps."

In this same examination he was asked—question 4th—(*Record*, 296):

> * * * "Whether *he knew and was intimate with the administrators or superintendents of La Abra Company* or the other employees; and if so, *to state their names.*"

To this he replied (*Record*, 298):

> "Was on friendly terms with Julian A. De Lagnel, who acted for some time as the superintendent of said Company. He also knew and became acquainted with Charles H. Exall, who succeeded De Lagnel when he left; *he did not know any other superintendents.*"

The answer that he wrote in English to this same question (*supra*) is given as follows (*Record*, 302):

> "Fourth. He said that he has visited Tayoltita several times, and became acquainted with Julian A. De Lagnel and Charles H. Exall, superintendents of La Abra Company. He does not —— Thomas T. Bartholow."

Bartholow was the first superintendent, whom, as appears elsewhere, Sundell never met. De Lagnel was the second superintendent, and Exall the third and last.

There can be no reasonable doubt, in view of this deliberate and repeated exclusion of Granger from the list of the Company's superintendents, that he was not regarded at that time by Sundell as having been employed or authorized by the Company to act in that capacity. The two men had been intimate for ten years, and were together and in consultation at Mazatlan when Sundell was examined. But Sundell had actual knowledge that Granger was neither superintendent of the Company, nor possessed of any authority from its officers to act for it or

them in any capacity or respect whatever, for when in 1873—*five years after Exall's departure*—Granger desired to dispose of some remnants of the Company's property, he got Sundell to make another translation of Exall's letter of February 26, 1868, this time in court at San Dimas, because he had nothing else that would answer his purpose—not a letter or scrap of writing from the Company, or any of its officers in all that time.

But when, seventeen years later, Sundell was examined in this suit, he included *Granger* among the Company's superintendents (*Record*, 520):

> "61. Question. Did you know, during your stay at San Dimas, from 1865 to 1868, the officers of La Abra Mining Company at Tayoltita?
>
> Answer. Yes; except the first superintendent.
>
> 62. Question. What was his name?
>
> Answer. I think, Bartholow.
>
> 63. Question. Who were the other superintendents with whom you were acquainted?
>
> Answer. Julian A. de Lagnel, Charles Exall, and *James Granger*.
>
> 64. Question. In what order were they superintendents?
>
> Answer. In that order named."

When asked on cross-examination why he did not mention Granger as one of the Company's superintendents in the Mazatlan examination (*Record*, 534, cross-ques. 6), he said (*ib.*, 541, 542):

> "When I gave my testimony in August, 1877, the district judge, Rafael Villegas, intimated that testimony was required that had a bearing on the events complained of by La Abra Company, and to the time said events had taken place. As Mr. Granger's advent as a 'in charge of' or 'superintendent of La Abra Company's property' was a *subsequent* event, I could not mention him as one of them. At the pres-

> ent time, *when subsequent events are inquired into*, I feel obliged to mention Mr. Granger, as his doings seem to be of much importance."

In making his explanation he seems to have forgotten that he was examined on written interrogatories at Mazatlan, and that one set of his answers was written out by himself in English; also that there was no limit of time in the question or in either of his answers, at Mazatlan, in regard to the Company's superintendents. He was asked whether he knew them, and, if so, *to state their names*, which he did, adding, of his own accord, that "he did not know *any other* superintendents."

There is neither proof nor likelihood that the judge intervened with any such suggestion as Sundell states. Nor is it true that his examination at Mazatlan was confined to events prior to Exall's departure. The translation of Exall's letter of February 26, 1868, made in court at San Dimas by Sundell, as to which he was examined at Mazatlan, was made more than five years after "the events complained of by La Abra Company." He was also examined at Mazatlan as to the testimony given by Exall and Bartholow before the Mixed Commission in 1870 and 1874 (*Record*, 297, ques. 20), and, after reading their depositions, he gave his opinion on the points specified in the question. (*Ib.*, 299.) He was also examined *as to the treatment accorded to Granger himself subsequent to Exall's departure* (*Record*, 297, ques. 26th), and he answered (*ib.*, 300)—

> "That the only foreigners that remained in the mines *after Exall left* were Messrs. Granger and Sloan, and deponent never heard that they were ever molested in their persons or property."

In the light of his own testimony, Sundell's explanation of this significant discrepancy between what he said

at Mazatlan and what he said in this suit, as to Granger's relation to the Company, is seen to be a tissue of falsehoods.

The truth is, that he was examined at Mazatlan for the purpose of subverting the award, and if it had occurred to Gaona and Granger, who were acting for Mexico at that time, as it subsequently did to Mexico's agents in Washington, that it might be claimed that the Company was represented by a superintendent at Tayoltita, in the person of Granger after Exall's departure, and could not therefore have abandoned its enterprise or its property when Exall left, Sundell would have included Granger among the Company's superintendents in his Mazatlan depositions, as he did seventeen years later in this suit.

He also swore in this suit, as he had done at Mazatlan, although given a fair opportunity to correct his mistake, that Mr. Rice, superintendent of the Durango Company at San Dimas, left Mexico in January, 1868. (*Record*, 521.) But it is clear from the evidence that Mr. Rice did not leave San Dimas till April or May. He bought some bullion from Granger after Exall left, and we know that Exall was in Mazatlan on March 15, 1868, for that is the date of a letter which he wrote to Granger at that place after leaving the mines. (*Record*, 286.) The following from Francisco Torres' testimony shows that Mr. Rice was at San Dimas after Exall had gone (*Record*, 551):

> "* * * I recollect that on one occasion Mr. Rice was offered a small bar of silver.
>
> "66. Q. By whom?—A. Said to belong to the Company. It was taken by a party there for the purpose of selling it.
>
> "67. Q. Who was the party?—A. It was taken by Don Santiago Granger.
>
> "68. Was that before or after El Mudo (Exall) had left?—A. *It was after El Mudo left.* (*Record*, 551).

The testimony of Mr. Rice's brother-in-law, Mr. Birmingham, is conclusive on that point. (*Record*, 741).

And there are debits and credits to J. G. Rice in one of the Company's old books, dated April 14 and 30, 1868. (*Record*, 750.)

The time of Mr. Rice's departure from San Dimas has an important bearing on the credibility of Sundell's testimony, for in order to show that Exall had spoken publicly about leaving Tayoltita, and returning to New York months before he left (although, of course, that would not prove that he was not finally compelled to leave for fear of his life), Sundell had made the following statement in his deposition at Mazatlan in August, 1877. (*Record*, 303):

> "Mr. Reed * (Rice) superintendent of the Durango Mining Company, *left Durango in January of 1868*, and deponent remembers that Mr. Exall *came to Mr. Reed's* (Mr. Rice's) *and told him how sorry he was not to accompany him in his trip, but he was in hopes of following him in the next steamer*, as he had to go to New York to consult with the Company; Exall said this in public, and did not make a secret of his intended trip."

Although in this suit he reiterated his statement that Mr. Rice left Mexico in January, 1868, adding that he went from San Dimas "on horseback to Mazatlan, and by steamer from Mazatlan to San Francisco," Sundell's recollection of Exall's farewell visit and parting words to Rice seems to have failed him (*Record*, 521):

> "76. Q. Do you remember seeing Mr. Exall, the superintendent of La Abra Mining Company, at San Dimas *about the time that Mr. Rice left?—A. No; not particularly.*
>
> "77. Q. Did you not say in your deposition in

* Corrected by the witness at his examination in this suit. (*Record*, 521.)

1877 that you remembered having seen Mr. Exall *at that time?*—A. I remembered it at the time I gave my deposition, but, *of course, I do not remember* now.*

"78. Q. Did you or not then say so?—A. Yes, sir (here he must have looked at his deposition); I said so in answer to the twenty-third point."

Now, keeping in mind that the point of the alleged farewell remarks of Exall to Rice was that Exall had spoken publicly of his intended departure months before he left, what follows is especially significant:

"79. Q. Do you remember, Mr. Sundell, Mr. Exall *at any time* about the month of January, 1868, *speaking* of an intention to leave La Abra Company's mines to consult with the Company?—A. (Now notice how he dodges the question.) I *knew that he was going*, there was no secrecy about it, but any particular day I do not remember." (*Record*, 521.)

The question was whether he remembered Exall "*speaking.*"

What had become of Exall's parting words—of the wish that he was going with Rice—of the hope of following him by the next steamer? Had it dawned upon Sundell, in the interval, that Exall left first and that perhaps the fact might be proved in this suit, and his Mazatlan deposition and his credibility as a witness be irreparably damaged? The examiner was evidently in blissful ignorance of the fact that Exall left first and that Rice bade him good-by at Mazatlan, and took back a letter from him to Granger at the mines. This appears from Exall's letter of March 15, 1868, to Granger. (*Record*, 286.)

* Compare this failure of memory with the circumstantial explanation which he made in this suit touching his exclusion of Granger as one of the Company's superintendents in the Mazatlan depositions.

Sundell knew he was on dangerous ground while testifying in this suit, on that subject, and he squirmed like an eel in the hands of complainant's counsel:

> "85. Q. Did you visit Tayoltita *after* Mr. Rice left San Dimas and *before* Mr. Exall left Tayoltita?—A. I think not.
>
> "86. Q. Did you see Mr. Exall at San Dimas, or elsewhere, *after* Mr. Rice left San Dimas?—A. Well, I think I saw him once.
>
> "87. Q. Did you have any conversation with Mr. Exall about his leaving Tayoltita?—A. Well, in a general way.
>
> "88. Q. Was there any particular circumstance *assigned by Mr. Exall* in that conversation as a reason for his leaving Tayoltita, or any condition of affairs at Tayoltita?—A. Well, *the reason why he left* was because the mine did not pay and he had nothing to do. The mine did not pay to work, and the Company would not furnish him any more money.
>
> "89. Q. Was that the reason *assigned by him?*—A. It was *the general understanding.* (*Record*, 522.)

Again the questions were *what Exall had said*, but the witness who, at Mazatlan, had given Exall's words to Rice, when the latter was represented as leaving for New York, had to fall back on "the general understanding"—the general understanding in regard to something, be it observed, which had not then happened.

When Sundell's attention was drawn on cross-examination to Exall's letter of March 15, 1868, in which he says to Granger, "I wrote you by Rice," and he was asked to state if he knew who was that Mr. Rice, he said:

> "There was a *Mexican* nicknamed 'José Rice' or 'Mister Rice' who was employed by the *Americans* as a messenger and as a servant on the road to and from Mazatlan or Durango. If the man is still living at San Dimas, he can be found by those

names, as the people have forgotten his true name." (*Record*, 542, answer to cross-question 15.)

Now, there is no reference in the whole of the case to any Mexican nicknamed Rice, or to any person of that name other than Mr. Joseph Rice, superintendent of the Durango Company at San Dimas, except Seth Rice, one of the Company's American machinists, who returned during De Lagnel's superintendency. (*Record*, 238.)

It is clear that Mr. Rice remained at San Dimas after Exall left Tayoltita, and was one of the American friends who accompanied him to Mazatlan. It is also clear that Exall was at San Dimas on the 12th of January, 1868, as appears from his letter of that date, written at that place, to Señor Larenga. (*Record*, 279, 280.) And as he had just been released from the pest house, he was probably homesick about that time, and may have said to Sundell or Rice that he would like to leave the country by the next steamer. Rice had expected to leave by the same steamer that Exall subsequently took, but remained later, as explained by Mr. Birmingham in his testimony (*Record*, 741):

> "He (Rice) had resigned his superintendency in 1867, but for certain reasons remained over when Mr. Martin was appointed his successor until 1868, when he wrote that he would *expect to arrive in San Francisco in the latter part of March*, but was detained until later."

Another proof of Sundell's untrustworthiness as a witness is furnished by his testimony in regard to the bullion which he refined for De Lagnel shortly prior to the close of the latter's superintendency and his departure from Tayoltita (*Record*, 523):

> "105. Q. About how much was there of it?—A. He brought about 13 pounds of bullion.

"106. Q. What was its condition?—A. A very low alloy.

"107. Q. About what proportion of pure silver was there in this 13 pounds?—A. About two-thirds.

"108. Q. What was the rest?—A. Copper and iron.

"109. Q. What, if anything, did you do with this bullion?—A. I refined it for him.

"110. Q. And what was the result of your refining?—A. *Nine pounds of pure silver.*

"111. Q. Do you know what became of that bullion after you refined it?—A. Mr. De Lagnel reported that he was going to take it home to his company."

On cross-examination in regard to the weight and value of the refined bullion, he said he meant "9 pounds Mexican weight," and that "the Mexican mint price for silver at that time was $9 a marc, which is equal to $18 a pound." (*Record*, 543.) This would make the refined bullion worth $162. But we know positively that it was worth double that or more. It was taken from De Lagnel (who was trying to smuggle it out of the country) by the Custom House officers at Mazatlan, and it was afterwards redeemed by Exall who sent it to Mr. Garth in New York, and reported the transaction to him on the 17th of May, 1867, as follows (*Record*, 266):

"I succeeded in recovering the bullion which the authorities here took from Col. De L., by the payment to the different government officers and getting it aboard steamer of the sum of $247. I had either to pay the amount mentioned, or allow them to retain the silver, *its value being much more*—there being a large percentage of *gold* in it."

Mr. Garth said in his testimony in this suit that he thought the "little piece of bullion that came from there brought $300." (*Record*, 717.) His recollection when

he testified before the Senate subcommittee was as follows:

> "I think there was a piece of silver that came to New York sent by Exall or De Lagnel—Exall, I think—which sold for three hundred and odd dollars—$380 or $390, I think, as near as I can recollect." (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 114.)

And he added that it was mixed with gold.

It thus appears that Sundell in his usual positive manner misstated the composition and value of the bullion which he had himself refined, and that, therefore, even in a matter within his personal and professional knowledge, his testimony is unworthy of credit. The fact that he testified on this matter from memory—as he stated in his cross-examination (*Record*, 543)—increases rather than lessens his untrustworthiness; for he should not have been willing to testify so positively in his direct examination about a matter of such detail after a lapse of twenty-seven years. One would have thought that he was reading from a memorandum made at the time.

When questioned about the remains of the ore that was piled at the Company's hacienda, he said that when he was there in 1890, *it had all been thrown into the river.* (*Record*, 525.)

But Francisco Torres, whose testimony was taken for the Complainant, in this suit, in October, 1894, testified that he was there "in May last," that he "saw the ores," and that they "*still exist there.*" (*Record*, 550, answer to question 42.)

In answer to cross-question 29, Sundell said that Ralph Martin "arrived at San Dimas about October, 1867." (*Record*, 543.) But Martin succeeded Rice as superintendent of the Durango Company, and arrived at San

Dimas after La Abra Company had abandoned its property at Tayoltita. (*Record*, 161, 164.)

In answer to cross-questions 31 and 32, regarding the nature of the ores at the Company's hacienda and in the district generally, Sundell said (*Record*, 543):

> "My general knowledge of the ores in that district entitles me to call them free milling ores and not rebellious ores. * * * Colonel De Lagnel's description may be accepted as substantially correct, but the presence of 'shining yellow pyrites' does not make the ores in that district rebellious."

A. B. Elder, who had mined for himself at La Puerta; near Tayoltita, and was afterwards in charge of La Abra Company's reduction works, testified, on that point, as a witness for the Mexican government in the Senate investigation, as follows:

> "Q. You said you owned a mine at La Puerta; what kind of a mine was that?
>
> "A. It was a gold and silver mine.
>
> "Q. What was the character of the ore?
>
> "A. It was sulphuret *and very refractory.* (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 567.)
>
> "Q. What was the character of the ore that was left—the 75 per cent. remaining on the patio (of La Abra Company's hacienda)?
>
> "A. That was a sulphuret ore, colored, and containing a great deal of antimony and some lead, as well as some iron in the shape of iron pyrites which made it *a very refractory ore.* (*Ib.*, 559.)
>
> "Q. And how many tons of La Luz ore of this rebellious or refractory kind were on the patio?
>
> "A. I think there were some 500 tons of those ores." (*Ib.*, 589, 590.)

The Mexican agent, Avila, in his motion before the Umpire for a rehearing, offered to prove in mitigation of damages (after the case had been pending more than five years, and had been finally decided under the

treaty), that much of the ore in the Company's pile was rebellious, and, in token of his ability to prove the refractory character of the ore, he referred to certain data which he had obtained from the Messrs. Barcena, of Philadelphia. (Ex. Doc., No. 103, H. R., 48th Cong., 1st Sess., 122.)

Thus the Mexican agent made an offer, twenty-two years ago, to prove the very thing which Sundell, as a witness for Mexico and the United States in this suit, now deliberately and specifically denies, although it is proved by a mass of concurrent testimony.

In denying Avila's motion for a rehearing, the Umpire inquired:

> "Why were not the statements of these gentlemen—of whose existence the Umpire was not aware, and to whom he had not access—reduced to evidence and produced before the Commission?" (*Ib.*, 127.)

Sundell also said, in answer to cross-question 32 (*Record*, 543), "that the ores in the district of San Dimas do not change, although they may be exposed to the atmosphere for a number of years;" while Elder testified before the Senate subcommittee, as a witness for Mexico, that exposure would in time desulphurize them, and they would in time decompose. (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 590.)

How can fraud or anything else be proved by witnesses who, although called on the same side, contradict themselves and each other so flatly?

In answer to questions 279 and 280, in his examination in this suit (*Record*, 533), evidently put to him for the purpose of showing that he had not made himself familiar with La Abra Company's case, Sundell said that he had *never seen a copy* of "the testimony given for and against the claim of La Abra Company before the Mixed

Commission of the United States and Mexico" *until the year 1888.* (*Record*, 533.) But in his examination at Mazatlan, in 1877, he was asked (*Record*, 297, question 20th)—

> "To state, after reading the affidavits of Bartholow and Exall, *contained in the book of evidence in support of the claim of La Abra Company* * * * whether," etc.

And in reply he said (*Record*, 299)—

> "That *he had read carefully* the depositions of Bartholow and Exall, to be seen in *the book of evidence* in support of the claim of La Abra Company, as also the depositions about Juan Nepomuceno Manjarres, Bartolo Rodrigues, and Camacho."

The Government undertook, in this XVIth paragraph, to prove by Sundell that the material allegations of the Company's memorial and the material testimony which it submitted in support of its claim were false. Exall's imprisonment, which is certainly a material part of the Company's case, is alleged in the memorial, and is the subject of much of the evidence on both sides. We will now examine Sundell's testimony on this material part of the Company's case. And, first, it is to be observed that he had no personal knowledge of the imprisonment, and that his testimony on the subject consists entirely of what he says that Exall told him about it. He was not questioned, and he did not say anything on this subject in his examination at Mazatlan, but as he read Exall's depositions at that time (*supra*) which referred to his imprisonment, and as Granger, with whom he was in consultation, knew that this was an important part of the Company's case, and had himself testified on the subject, it may be safely assumed that if Sundell had recollected Exall's alleged statement in 1877, ten years after it was made, he would not now be testifying to it for the first

time in this suit, sixteen years later. The alleged statement was made to him in January, 1868, and he testified to it for the first time in October, 1894, after a lapse of twenty-six years.

The following is from Sundell's direct examination in this suit (*Record*, 527):

> "179. Q. Did you know Judge Nicanor Perez at Tayoltita?—A. Yes, I knew him.
>
> "180. Q. Did you ever hear of any trouble between him and Mr. Exall in the latter part of 1867 or the first part of 1868?—A. Yes, sir. *Exall told me about it.*
>
> "181. Q. Well, what did Exall tell you about it?—A. Exall *came over to San Dimas* and told me he had some trouble with Nicanor Perez, because Nicanor Perez *wanted to go into the storeroom where Exall was*, and Exall got him out of the storeroom, and Nicanor Perez got offended. *If I remember right*, he arrested Exall for a few hours.
>
> "182. Q. How soon after this occurrence was it that Exall told you about it?—A. *The next day Exall got out.*
>
> "183. Q. Was Exall imprisoned after he told you about his short imprisonment?—A. No, sir; he never was.
>
> "184. Q. Do you know whether he took any steps to complain to the higher authorities of Nicanor Perez's action?—A. I do not.
>
> "185. Q. Was Mr. Rice still at San Dimas at this time?—A. I do not remember.
>
> "186. Q. Did you ever hear of any further trouble between Exall and Judge Perez?—A. Never."

The following is from his cross-examination, which was conducted by the United States Commissioner in San Francisco upon written interrogatories prepared in Washington:

> "37. Cross-question. You were asked in your direct examination (question 181) what Exall told you

about the trouble he had with Judge Nicanor Perez, and you said that, if you remembered right, Judge Perez 'arrested Exall for a few hours.' Do you swear that Exall told you that he was arrested or imprisoned by Judge Perez only for a few hours?" (*Record*, 537.)

To this he replied:

"Answer to cross-question 37. I swear that to the best of my knowledge, recollection, and belief that Exall told me that he was *arrested* by Judge Perez only for a few hours." (*Record*, 544.)

Instead of testifying in his usual positive, unqualified manner, Sundell said in his direct examination (*supra*), referring to Perez: "*If I remember right*, he *arrested* Exall for a few hours." But Sundell had no personal knowledge of the occurrence, and was telling—as he said—what Exall had told him about it. Sundell, so testifying, says that "*Perez wanted to go into the storeroom where Exall was.*" Exall says in his letter of January 7, 1868, to the Prefect, giving an account of the occurrence on the same day (*Record*, 280):

"This morning about 11 o'c'k, Sr. D. Gicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then *walked into the storeroom adjoining the store, the time I was behind the counter*, and seeing him in there, where no one was ever allowed without permission, I, in as polite Spanish as I was master of, requested him to *come out*," *etc.*

They were evidently in different rooms, and Perez did not go into the storeroom "*where Exall was.*" This is one of Sundell's mistakes, and is mentioned, not because it is important in itself, but to show that his recollection is not trustworthy, even when there may be no intention on his part to misrepresent or color a particular fact.

Curiously enough, the length of Exall's imprisonment in the pest-house can be shown from Sundell's statement

in connection with the letter-press copy-book. Sundell testified (*supra*) that Exall *came over to San Dimas* and told him of the occurrence, "*the next day Exall got out.*" It appears from Exall's letter of January 12th, 1868, written at San Dimas to Miguel Larenga, that he (Exall) had received *at Tayoltita* a letter, dated *the day before*, from Larenga, but had not answered it then and there, because he "intended to come here;" *i. e.*, to San Dimas, the next day, and so, he says, "I have deferred my answer till my arrival." He therefore "got out" on January 11th, 1868. Perez arrested him and he appealed to the Prefect at San Dimas by letter on January 7th. The Prefect (Olvera) did not interfere, and Perez shut him up in the pest-house on the 8th, and kept him there till the 11th. This agrees with the fact, as found by the Mexican Commissioner (Zamacona), and stated in his opinion on the Company's claim, that Exall's imprisonment lasted four days. (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 40.) Avila, the Mexican agent, a year or so later, contended, in his motion for a rehearing, that Exall's imprisonment "had a *cause* and lasted only a short time—two or three days" (*ib.*, 107). But Sundell tried to shorten the imprisonment, or rather the *arrest*, to "a few hours;" for he carefully avoided using the word "imprisonment" both in his direct and cross-examination; but unconsciously he furnished a clue to the length of time that Exall was confined in the pest-house by stating (as we have seen) that he came over to San Dimas *the day after he got out.*

At the close of his direct examination in this suit, Sundell was recalled, and question 288 was put to him (*Record*, 533):

> "When you testified on Tuesday last about Exall's trouble with and arrest by Judge Nicanor Perez, were you testifying solely from your present

recollection of that circumstance, *or had you ever seen or been told anything since the occurrence to refresh your memory about it?*"

And he answered:

"I only testified from my present memory of the occurrence."

But Sundell never knew anything of Exall's "trouble with and arrest by Judge Nicanor Perez," except by hearsay, and could not possibly have any recollection of "the occurrence" itself, but only of what he had heard about it after it happened—over a quarter of a century previously; and, in the second place, he testified at Mazatlan (*supra*) that "he had *carefully read the depositions of Bartholow and Exall contained in the book of evidence in support of the claim of La Abra Company*," and we know that there were references in both of Exall's depositions to his arrest and imprisonment at Tayoltita, and that *one of the objects of Sundell's examination was to throw discredit upon Exall's testimony and that of other witnesses as to the duration and horrible circumstances of his imprisonment.*

It was Granger that offered Sundell as a witness (through Gaona) to the Mexican government, and all three were together in conference at Mazatlan, as appears from Sundell's answers to cross-questions 49 and 50 (*Record*, 545):

"As far as I can recollect, I saw Granger at Mazatlan during my stay there of about a week, and we were staying at the same hotel, and probably saw him every day. I did have a conversation with Granger on the subject of my deposition of August 9, 1877, prior to making it, because he communicated to me verbally the request of the district attorney, L. Gaona, to have me examined in regard to the claim."

As a witness for the Mexican government at Mazatlan, and afterwards in this suit, Sundell, who lived at San Dimas, while the Company was at work in Tayoltita, had the most wonderful knowledge of everything that might, could, would or should have happened at Tayoltita in any way affecting the Company's claim.

In his deposition at Mazatlan, in answer to question 15th, he said—

> "That he never heard of the robbery spoken of, *neither could it have taken place without coming to his notice*, as deponent's habitual residence was only two hours' ride from La Abra mines in the San Dimas district." (*Record*, 299.)

He said in his examination in this suit that he had never visited the Company's mines (*Record*, 518) or assayed any of the Company's ores (*ib.*, 524), and that he could not tell the value of ores from looking at them (*ib.*, 524), and yet he said that the ores which the Company had at its hacienda would not pay either to beneficiate or mine! (*Ib.*, 524.)

On his direct examination, Sundell said he had never heard of *any* trouble between Exall and the Prefect, Mora or Olvera, and that it was *impossible* there could have been any serious trouble between them without his hearing of it. (*Record*, 525, answers to questions 147–150.) But, in answer to cross-question 33, he admitted that he *had* heard of the orders from Mora and the so-called "rising of the people." He added (*Record*, 544), in explanation, that he did "not consider the same as serious," but, of course, that did not explain why he had sworn on his direct examination that he had never heard of *any* trouble between Exall and those authorities.

Does it not seem absurd for Mexico or the United States to put this man's conjecture, in a matter so material to the Company's case, in the scales against the posi-

tive testimony of the Mexican magistrate, Soto, who swore, as a witness for Mexico, that he issued the orders in question "because there had been a rising of the people *to compel him to*," and "that, besides the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora?" (*Record*, 129.)

And this is the best the government can do to make the proof which it undertook to make in the bill.

Another illustration of Sundell's habit of stating positively what he merely fancied or supposed (Record, 526):

> "165. Q. Do you know whether La Abra Company owned any mules of its own?—A. No, sir; they *never owned any pack mules.*
>
> "36. Cross-question. In answer to question 165 in your direct examination you said that La Abra Company never owned any pack mules. On what grounds do you make such a positive statement, when you have testified that you did not even know General Bartholow, the Company's first superintendent? Did you not mean simply to say that you never knew or heard of La Abra Company owning any pack mules?" (*Record*, 537.)
>
> "Answer to cross-question 36. I can say that I positively *heard* from George Grassie, who was on the road to get up the freight for the *Durango* Mining Company, and who was very well acquainted with Mr. Grove and Dr. Hardy, who were on the road for La Abra Company on the same business, that La Abra Company never was the *actual* owner of a *train* of pack mules. Sometimes a *nominal transfer* was resorted to to *prevent interference of the military authorities.*" (*Record*, 544.)

Sundell says he heard these things from Grassie, who was in the employ of the Durango Company, but does not even say that Grassie said that Grove and Hardy had so

informed him. That he had no personal knowledge on this subject appears from the following:

> "166. Q. About how many mules did they own, if any?—A. I *do not know*, but I should *think* from eight to ten *riding* mules used by the superintendent and the other employés." (*Record*, 526.)

Compare this with the testimony of one of the most prominent witnesses for Mexico (Ygnacio Manjarres) on the same point (*Record*, 121):

> "That the deponent never saw but *twenty-odd mules*, and these were *pack* and saddle mules."

The complainant tries to show by Sundell that Granger was in possession or control of the Company's property, as its agent or superintendent, as late as September, 1873 (*Record*, 531):

> "248. Question. At the time you made this translation in accordance with the application of Granger to the judge and the judge's summons to you, was there anybody, to your knowledge, other than Granger, claiming possession or control of La Abra Company's mines and property at Tayoltita?
> "Answer. Not to my knowledge."

But, more than two years earlier, Granger, who was in partnership with the Mexican miner, Torres, had denounced one of the Company's mines for himself, and in his own name, which he could not have done under the Mexican mining laws if he had been in the Company's employ or connected with it in any fiduciary capacity at that time.* As to that transaction, Sundell

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* The ordinance in force on that subject in Mexico at that time provided:

> "Neither shall Administrators, Stewards, Overseers, Keepers of Tallies, Workers or Watchers of Mines, nor, in general, *any person in the service of Mine Owners*, whether of superior or subordinate class, be permitted to register, denounce, or in

said, in answer to cross-question 3 (*Record*, 541):

> "I never had anything to do with the denouncement of El Rosario mine by James Granger, and if I did know anything about the denouncement at the time, or subsequently, *I have forgotten about it.*"

Granger's denouncement of El Rosario was a matter of record, and could have been made only upon proof *that the mine had been abandoned by the Company for a period not less than four months prior to the application.* And if there had been any suspicion on the part of the mining board that the applicant was an agent or in the employ of the former owner, he would have been compelled to prove that it was not so, or his application would have been rejected. He denounced the mine at San Dimas April 8, 1871, and he and his new Mexican partner, Francisco Torres, were put in possession of it by the mining board August 11, 1871.* And within two

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any other manner acquire mines within a space of a thousand yards round those of their masters, but I allow them to denounce any mine for their said master even though not authorized by them to do so, provided the aforesaid masters make good the denouncement in the terms prescribed by Section VIII of Chapter VI of these Ordinances." (ROCKWELL'S *Spanish and Mexican Law of Mines and Mining*, Chap. VII, Sec. IV, 56.)

This is the standard authority on the subject, and is referred to by Colonel De Lagnel in one of his letters from Tayoltita to the Treasurer of the Company in New York. (*Record*, 239, near the foot of the page.)

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*The following certificate from the official translator of the Commission is printed in the *Record* at the foot of page 28:

> "The copy of the papers contained in this denouncement, now on file before this Commission, show: That James Granger, an English subject, denounced the 'Rosario mine,' *formerly belonging* to La Abra Company at Tayoltita. The denouncement was dated at San Dimas, April 8, 1871. The usual formalities prescribed by the mining ordinances having been completed, formal possession of the mine was given to the said James Granger and *Francisco Torres, his partner*, by the 'Deputacion de Mineria' mining board on the 11th of August, 1871. The papers show that there was no opposition made to either the denouncement or possession."

weeks (August 23, 1871) he gave his first deposition as a witness for the Mexican government. (*Record*, 111.)

Now, it is a fact (although it may scarcely seem credible) that Sundell when he testified as quoted above, knew, of his own personal knowledge, that Francisco Torres was not only working one of the Company's mines, but living in the Company's hacienda at Tayoltita in the fall of 1871. (*Record*, 546, answer to cross-question 72):

> "On my return to San Dimas, in 1871, I passed through Tayoltia, *and did see Francisco Torres living in a room at La Abra Company's hacienda, and understood that he was working the La Luz mine that formerly belonged to La Abra Company.*"

But perhaps the most remarkable part of Sundell's testimony is his account of his whereabouts while the Mexican authorities were examining witnesses in court at San Dimas, in opposition to the Company's claim, in 1871 and '72. He seemed to appreciate the importance of the question why, when he was living at San Dimas at that time, and was on intimate terms with Granger, who was examined so frequently by the Mexican authorities, he himself had never been put on the stand.

In his direct examination in this suit he corrected a mistake that had occurred as to his residence in his deposition at Mazatlan, and made a particular and careful statement on the subject. He stated in answer to question 27, in this suit (*Record*, 519), that he had been altogether ten years in Mexico, at San Dimas, where he arrived in 1865, and that he had been absent from the country "about two years." The subject was again taken up by complainant's counsel and the period of this absence defined (*Record*, 519):

> "34. Q. You said, I believe, that you were two years absent from Mexico?—A. Yes, sir.

"35. Q. Between 1865 and 1877?—A. Yes, sir.
"36. Q. During *what years were you absent?*—A. 1869 and 1870."

But when he was asked, on cross-examination, where he was living and how he was employed in 1871 and 1872, and *whether he knew or heard at that time that the Mexican authorities were taking testimony at San Dimas, in opposition to the claim of La Abra Company*, for presentation to the United States and Mexican Claims Commission at Washington, he replied (*Record*, 544, answer to cross-ques. 34):

> "Part of 1871 I was traveling in different parts of Mexico, until I returned to San Dimas, *about the month of October of that year.* In 1872 I was *temporarily* absent from San Dimas, visiting new mining camps in Nevada and Utah, *so it happened I was not there when the Mexican authorities were taking testimony in San Dimas in opposition," etc.*

So he was absent from Mexico in 1872—"*temporarily*"—as well as in 1869 and 1870. Did he mean to add another year to his absence from Mexico, notwithstanding his previous particular and repeated testimony to the contrary, in order that it might not appear that he was at San Dimas when his friend Granger and so many other witnesses were examined for the Mexican Government in court at that place? Or did he mean by "temporarily" that he was absent only a part of the time from San Dimas in 1872? He evidently wished to make a "change of front" for a strategic purpose. I quote again from his direct examination (*Record*, 519):

> "27. Q. How long had you been in the Republic of Mexico in the year 1877?—A. *Ten years*, altogether. *I was absent about two years.*
> "28. Q. When did you first go to the Republic of Mexico?—A. In 1865.

"29. Q. To San Dimas?—A. To San Dimas.

* * * * * * *

"34. Q. You said, I believe, that you were *two years* absent from Mexico?—A. Yes, sir.

"35. Q. Between 1865 and 1877?—A. Yes, sir.

"36. Q. During what years were you absent?—A. 1869 and 1870."

But, in his cross-examination, to prevent it appearing that he was accessible to the Mexican authorities as a witness at San Dimas in 1872, he includes that year also in his absence from Mexico.

Why did he conceal the remarkable fact in his Mazatlan deposition and in his direct examination in this suit that three or four months after he returned to San Dimas from such a prolonged absence, in October, 1871, he left San Dimas and Mexico again for another year? And why, in both his previous examinations, did he number and designate the particular years of his absence from Mexico, omitting 1872 in both cases, although questioned and answering so particularly on that subject?

In answer to cross-question 35, Sundell said (*Record*, 544):

> "I did not have any conversation with Granger as to any of his various examinations by the Mexican authorities during that time (1871 and 1872), *as I was not there.*"

But *he was there*—even on his own showing—within a few days of Granger's second examination by the Mexican authorities on October 6, 1871, and there he remained until he left the country again—if he really did leave it—in 1872. But supposing he was absent for part or all of that year he could have been examined in 1873, or at any time on a proper showing prior to the argument of the case before the Commissioners in 1875. The

Mexican government did not file its evidence with the Commission until October 30, 1873. (*Record*, 106.)

Sundell testified in answer to cross-question 57 (*Record*, 545):

> "*Nothing was ever said to me about giving my testimony on behalf of the Mexican Government while the Claims Commission was in session at Washington from 1869 to 1875.*"

But supposing that Sundell, after such a lapse of time, could properly be examined as a witness now—when he might have been examined twenty-five years ago—what material part of the evidence on which the award was rendered has been disproved or beclouded by his examination in this suit?

Has anything been proved by him that shows or tends to show that Sir Edward Thornton's award was obtained in whole or part (in the words of the act) "by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, its agents, attorneys or assigns?" Take the value of the ore abandoned at the hacienda and the mouth of the mines. The testimony on that question was conflicting, and even if Sundell had assayed a sample here and there, the results would not have been conclusive, because there would necessarily be variations in such a mass of the raw material. But he never assayed any of the Company's ores, and it is respectfully submitted that in view of the foregoing analysis of his testimony and his evident bias, nothing that he said in opposition to the Company's claim should be believed unless otherwise corroborated.

He testified to certain facts, otherwise corroborated, in the Company's favor; *e. g.*, that the mill they put up at Tayoltita was "the best that could be had at that time in California," and that it was "judiciously located and

constructed" (*Record*, 524); that the Company's mill man, Elder, was a competent assayer (*ib.*); that he saw the Company's letter-book in Granger's possession at San Dimas several years after the latter had moved to that place from Tayoltita (*Record*, 528); that "*very soon after Exall left*," he [Sundell] saw and translated Exall's letter of February 26, 1868, to Granger, and made another translation of it "which was legalized [in court] in 1873." (*Ib.*, 529, 530.)

This shows that the most important of Exall's letters—the one purporting to put Granger in charge of the Company's property—and the press-copy book itself were shown by Granger at San Dimas (instead of being concealed by the Company in New York) and could have been obtained by the Mexican authorities from Granger while the claim was pending before the Commission. (*Supra*, 109–111.)

Testimony of Francisco Torres.

The other of the two witnesses produced in this suit, out of the five named, by Mr. Attorney-General in that part of the bill now under discussion, was Francisco Torres, a Mexican miner of superior grade, who, however, could neither read nor write, and did not seem to have the remotest conception of the difference between what he conjectured and what he knew.

Torres, like Sundell, could have been examined by the Mexican government in opposition to the Company's claim while it was pending from 1870 to 1875, before the Commission, for, as he said in his testimony before the Senate subcommittee in 1889, he was always at San Dimas, and there would have been no difficulty in finding him. (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 528.) *Torres in fact was examined in court at San Dimas in 1872*, touching the disposition which Granger had made of some of

the articles belonging to the Company, but for some reason his testimony was not submitted to the Commission. (*Ib.*, 502, 528.) He was examined by counsel for the complainant in this suit on the 9th and 10th of October, 1894, at San Francisco, where he had been sent from San Dimas by the Mexican government. He was cross-examined in Mexico, December 19, 1894, upon cross-interrogatories prepared by the Company's counsel in Washington, and his testimony is printed in Complainant's Evidence, 87–104. (*Record*, 547–564.)

He was asked in his cross-examination (*Record*, 559, cross-ques. 16) whether he knew of any reason why his testimony was not or could not have been taken and submitted to the Claims Commission while in session at Washington, and he replied—

"*I do not know of any.*"

The character of his testimony in this suit will appear from the following illustrations:

> "1. Cross-question. In answer to question 17 in your direct examination, you said that *El Rosario mine was never worked by La Abra Company.* On what grounds did you make that statement?
> "A. *I was there myself.*" (*Record*, 557.)

Now, it is not true that the Company never worked El Rosario mine. Indeed, quite a number of witnesses for the Mexican government, in the original trial, as may be seen from their answers to the 3d interrogatory, testified that "the American Company *directed their attention principally to the Rosario mine.*" (*Record*, 107, 108, 109, *etc.*) This contradiction seems to have escaped the notice of complainant's counsel, who, depending upon Torres, asserted that "La Abra Company did not work that mine at all." (Mr. Maury's Brief on Final Hearing in the Court of Claims, 141.)

Moreover, when Torres said he *was there*, he could only have meant in the San Dimas District, for he testified in the Senate examination that "*during the time La Abra Company was engaged in working the mines, he was living in San Dimas.*" (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 515.) And he never noticed the Company's ore pile at the hacienda or was inside any of its mines "*until after La Abra Company had gone.*" (*Ib.*, 519; *Record*, 549, ans. to 41st ques.; 558, ans. to cross-ques. 5.)

It is true that La Abra Company did comparatively little work in the Rosario mine, and did that little near the close of its operations. But Torres was mistaken when he said that the Company never worked Rosario, and the other Mexican witnesses were also mistaken when they said that the Company turned its principal attention to that mine. But they may have included "La Luz" (which was largely worked by the Company) in Rosario.

And Torres made a still graver mistake when he said, in answer to question 24, that La Abra Company worked "*La Luz and El Cristo only.*" (*Record*, 548.) It appears from the superintendents' letters in the letter-press copy book (*Record*, 239, 244, 265, 266) that the Company worked La Abra, Arrayan and its dependencies, Talpa and Sanz, as well as La Luz and El Cristo. This mistake on the part of the Mexican witnesses may have arisen from suggestions of some Mexican official who had seen the imperfect transcript from the original ore books, which is among the books and papers produced in this trial by the Mexican Consul-General Coney. The original ore books contained pencil entries of the weights of the sacks of ore as they were weighed at the scales, and were merely temporary. Such a book was kept hanging alongside the bookkeeper's desk. Exhibit 40 (the transcript from these ore books) was not brought

down later than 1867. (*Record*, 618, 619.) In Colonel De Lagnel's direct examination, he said that he was satisfied that Exhibit 40 could be relied on as far as it went, but its incompleteness was exposed as follows in his cross-examination (*ib.*, 619):

> "Q. Do you see any entry there about ores from Talpa?
>
> "A. No, sir, I don't.
>
> "Q. Do you see any entry there about ores from Arrayan?
>
> "A. No, sir; only from the two mines La Luz and El Cristo.
>
> "Q. So that the record can not be a complete record, if *as your letters to Garth say*, you took out ores from Talpa and Arrayan?" (No answer.)

In his letter of Aug. 16, 1866, to Garth (*Record*, 239), De Lagnel said that he had put small gangs into Jalpa [Talpa] and Arsallas [Arrayan], and in his letter of Sept. 7, 1866, he informed Garth that they were "working in La Luz, El Cristo and Arrallon [Arrayan] with the same force as before." (*Record*, 244.)

The extracts from the Company's books (*Record*, 745), show that only $180.90 was spent on Rosario, while over $20,000 was spent on La Luz, over $10,000 on El Cristo, nearly $3,000 on La Abra, nearly $2,000 on Arrayan, and over $1,000 on Sanz.

The nature of Torres' testimony and his ideas of what constituted a knowledge of facts will be further illustrated by what follows (*Record*, 557):

> "2. Cross-question. In answer to question 20 in your direct examination, you said that those gentlemen (the former owners, Del Valle and Manjarrez) lost about $40,000 from working La Luz mine. On what grounds did you make that statement, and within what dates was the loss suffered?
>
> "A. I know because I was working for them

there at the smelter. It was *during the two years just prior to the sale of the business by them to the American Company.*"

Being probably unaware that the Umpire allowed only for actual expenditures, and not for the alleged value of the mines, Torres may have thought that he could help Mexico in this suit by belittling their value and suggesting that Del Valle and Manjarrez had imposed upon Garth and Bartholow. Torres could not read, and did not know what Del Valle and Manjarrez had testified, on behalf of the Mexican government, in the original trial, as to the yield of the mines before they were sold to La Abra Company. If Del Valle and his partner had lost $40,000 on La Luz "*during the two years just prior to the sale of the business by them to the American Company,*" he could not have been so disingenuous as to testify that, while his mining operations sometimes produced as high as 200 cargas a month—

> "It never was a business productive of *large* gains, and only yielded *enough* to enable the mines to be kept in such condition as to make them salable to him." (*Record*, 139.)

"A respectable gentleman," with "no motive to testify falsely," and "not afraid to tell the truth,"* would never have concealed a loss of $40,000 in that way. But, if his testimony seems guarded, it should be remembered that he was testifying, as a witness for the Mexican government, five years after the sale of his mines to the Company, and that meanwhile the Company had abandoned those mines and all of its personal property at Tayoltita, and that its claim for damages was then pend-

*So described by Mr. Maury in his brief on the final hearing in the Court of Claims, p. 47.

ing against Mexico, where the prejudice against all such claims and their supporters was intense and inveterate.

Del Valle's partner, Ygnacio Manjarrez, was more outspoken, and testified—also as a witness for Mexico before the Commission (*Record*, 111, 2d answer)—

> "*That during all the time that said mines were worked by them, they produced good profits up to the year 1865.*" (*Record*, 111, 2d answer.)

It was in 1865 that these mines were purchased from Del Valle and Manjarrez by Garth and Bartholow for the Company, and hence the contradiction of Torres by the former owners of La Luz is as complete as possible.

But his contradiction of himself is no less complete, for, from his testimony in the Senate investigation, it appears that he had worked as a smelter at the hacienda San Nicolas for Del Valle and Manjarrez, "*about two months*," and the sale to the company "took place one year after he had been working there." (Rep. 2705, Sen., 50th Cong., 2d Sess., 505.) He said that "*the only mine they were working was La Luz mine*," and that he "could not say what was the character or the quality of the ore taken from that mine, because his work was done on the mineral after it was refined." But he stated that "the result was very good." (*Ib.*, 506.)

When he testified in the Senate investigation that "*the result was very good*," did he believe or imagine that Del Valle had lost $40,000? And, if so, why did he not say so then? He said nothing of the sort. Neither did his friend Somero who came up with him to Washington and testified in the same proceedings. Somero, who had tried his luck in El Rosario and had occupied the Company's hacienda subsequent to 1873—five years after the

Company left—was examined as to "*the results of the working of the mine (mines) by Manjarrez and Castillo del Valle when they jointly owned them*," and he testified that "*they did not lose by the operation*, and perhaps obtained some benefit." (Rep. 2705, Sen., 50th Cong., 2d Sess., 542.)

Does it not seem preposterous for the complainant to produce in this suit a witness like Torres, who not only contradicts himself and the other new witness, Sundell, but also the Mexican witnesses whose testimony for Mexico before the Commission, as cited above from Exhibit A, forms part of complainant's bill?

Torres said, referring to Exall (*Record*, 552):

> "With Mr. Mora, *I am certain*, he had no relations of any kind, and the same thing I can say in regard to Macario Olvera."

Now, Mora was the Prefect at San Dimas, with whom Exall had so much trouble in June and July, 1867, and it was to Olvera (Mora's successor) that Exall appealed for protection in his letter of January 7, 1868, when he was arrested by Perez. Although so "certain," it is evident that Torres knew nothing on the subject. Like Sundell, Torres lived at San Dimas during all the period of the Company's operations at Tayoltita, and what he did not know of its conduct and concerns had never happened. This is illustrated by his testimony as to the robbery of one of the Company's employes by the name of "Scotty." The fact of the robbery is admitted, but a question has been raised by the complainant whether the robbers were soldiers or bandits.

Torres, however, disposed of the whole subject as follows (*Record*, 551):

> "59. Question. Did you know a man by the name of Scott or Scotty in the employ of the Company?

"Answer. No, sir; I was not personally acquainted with him. I might have seen him, but I do not know that I knew him.

"60. Question. Did you ever hear of his being robbed by the troops?

"Answer. *I do not believe he was ever robbed, because no robbery ever took place at Tayoltita. No robbery has ever been committed at that place.*"

This is how the complainant proves by Torres that all the material testimony for the Company was false.

Torres swore in the Senate investigation that Granger remained at the Company's hacienda "*three or four years after the Company disappeared.*" (Rep. 2705, Sen., 50th Cong., 2d Sess., 512.) It was considered necessary at that time to support Mexico's theory that Granger remained for several years after Exall's departure as superintendent for the Company, or in charge of its property and affairs, with its knowledge and consent. But incontrovertible facts, inconsistent with this theory having meanwhile been developed, Torres testified at his examination in this suit that Granger remained at Tayoltita after El Mudo (Exall) left, "nearly a year." (*Record*, 555.) But still the time is too long, for Sundell testified, referring to Granger—

"He was living at San Dimas, but he was not employed by Mr. Martin, before I left for San Francisco in 1869." (*Record*, 546, ans. to ques. 62.)

Sundell left for San Francisco in the *beginning* of 1869 (*Record*, 298, "second point;" 547, ans. to cross-ques. 79.)

While Granger may have been a frequent visitor at the Company's hacienda when it was occupied by Judge Soto, it is clear from the testimony that he moved to San Dimas almost immediately after Exall's departure.

Sundell was examined on this point as follows (*Record*, 527):

> "188. Q. You spoke of Mr. Granger as a superintendent of La Abra Company; where was he?—A. Sometimes he lived at Tayoltita and sometimes he lived at San Dimas.
>
> "189. Q. About how soon after Exall's departure did he come to San Dimas?—A. *Very soon.*"

Torres, like Sundell, proves nothing of the fraud, in general or particular, which it is incumbent on the complainant to prove, but does show in support of the Company's claim the following facts:

(*a*) That La Luz produced some quite rich ore which was reduced while Garth and Bartholow were visiting Tayoltita. (*Record*, 553, 554.) Torres said that 80 cargas of ore (24,000 pounds) produced "500 marcos or 250 pounds of silver," which would be worth $4,500, or more than $400 a ton. This, with other circumstances mentioned elsewhere, makes Exall's statement that he obtained $17,000 from 20 tons appear not so improbable as it otherwise might. (*Supra*, 72–75.)

(*b*) That he (Torres), after working La Luz without right or authority of law, as he stated in the Senate investigation (Rep. 2705, Sen., 50th Cong., 2d Sess., 512, 513), denounced the mine, and also worked El Rosario in association with Granger, as appears from his testimony in this suit (*Record*, 556):

> "144. Q. Did you not denounce El Rosario mine?—A. No, sir; I did not. *I only denounced La Luz mine*, and was interested in the mine of El Rosario in shares.
>
> "145. Q. With whom?—A. With Mr. Granger; but Mr. Granger did not perform any work.
>
> "146. Q. Did he put in any money?—A. Not a cent."

(c) That Torres was in possession of the Company's hacienda and mines for three years subsequent to Exall's departure. This seems to have been quite a surprise to Mr. Lines, by whom Torres was examined (*Record*, 549):

> "37. Q. About how often did you personally go to the mine or the hacienda of La Abra Company while it was in existence in Mexico?—A. Sometimes I would go there once or twice every three or four days, every week or every month; I would go there on business sometimes. *I was also living there during a period of three years.*
>
> "38. Q. *Living where?*—A. *Living at the hacienda. I established a hacienda there.*
>
> "39. Q. *At Tayoltita?*—A. *Yes, sir.*
>
> "40. Q. *Was this while La Abra Company was working there?*—A. *No, sir; it was afterwards. It was two or three years after the mines had been abandoned by La Abra Mining Co.*"

Mr. Lines seems still to have thought it was another hacienda which Torres had "established" in Tayoltita, and at which he lived for three years. But Torres had taken possession of the Company's hacienda and was working its mines—at first just as Soto, the stepfather of Granger's mistress, had done—without authority of law but *with Granger's permission*. How important it was for them to pretend, if their possession was challenged, that *he had charge of the Company's affairs!* And this they did in spite of the fact that so far as the record shows not a word had passed between him and the Company, either way, from the time of Exall's departure!

The following is from Dahlgren's deposition which was taken in September, 1872:

> "I know, too, that a Mexican citizen whose name is Francisco Torres, and who is *now* and has been *for the past year and more* the occupant of said haciendas and mining property and machinery of said Company, *claims ownership of the same*, and that he

works the mines of claimant successfully by 'Patio' process, a part of them under a denouncement made of the Rosario mine in the name of one Granger, an Englishman." (*Record*, 96.)

(*d*) This denouncement in the name of Granger was, of course, intended to make a record that would conceal the fact that another Mexican was trying his luck with the Company's property, after Soto, but it disposes of the pretence that Granger was, or thought he was, the Company's superintendent or its agent in any sense, for under Mexican law, as we have already seen, no superintendent or employee of a mining company could denounce a mine in his own name within a thousand yards of any mine belonging to his principal. He could only act in this respect for the company of whose interests he had charge. And if the Mining Deputation of the District, or any official acting for the Mexican government in the matter, had allowed Granger's denouncement when they believed or had reason to suspect that he was superintendent or agent for La Abra Company at the time, they would have made themselves amenable to punishment for malfeasance in office.

(*e*) Torres' testimony shows, by comparison with that of other Mexican witnesses, that a large part of the Company's ores was packed off from the Company's hacienda between the time when Exall left and the time when Torres first saw the pile in the "patio." There were 1,000 tons of ore on the "patio" when Exall left Tayoltita, in March, 1868, and when Torres first saw the pile, which was between 1869 and 1871, there were but 500 or 600 cargas, or say 75 tons, remaining. So he testified in the Senate investigation (Rep. 2705, Sen., 519), but when he testified in this suit he changed the figures to 5,000 or 6,000 cargas, or about 700 or 800 tons! (*Record*, 550.)

(*f*) Torres' testimony shows (corroborated by that of Hermosillo and Somero in the Senate investigation) that one of the Company's mines (La Abra) was supposed to be so rich below the old workings that one of the most experienced of Mexican miners (Ygnacio Manjarrez) denounced it after the Company left, and was engaged in tunneling it when he died (*Record*, 549):

> "31. Q. Did it strike the perpendicular shaft?—A. It did not reach the shafts; he died before the same was completed." * * *
>
> "33. Q. Do you know how much it cost him to open that tunnel?—A. It must have cost him very near $70,000; he expended that amount himself alone."

(*g*) What Torres said, with reference to his experience in *La Luz*, about the uncertainty and the ups and downs of mining, supports the Umpire's views on that subject, and justifies his decision not to allow the Company for the alleged *value* of the mines, but only for the amount actually invested in the enterprise and interest (*Record*, 554):

> "107. Q. Did you ever see the ledge from which these 80 cargas came?—A. *Yes, sir; I saw it, and I was afterwards the owner of it*, and I also lost $9,000 by the operation, having been induced to make the denouncement by reason of the richness of the ore. I made the denouncement after the mine had been abandoned by the Americans. *It very often happens that rich veins are found after working the mine;* then the ledge disappears and *another rich vein is discovered.* This happens after large sums of money have been expended in developing the mine.
>
> "108. Q. Did you see this vein before the sale to the Company?—A. *Before and after the purchase was made.*
>
> "109. Q. Did you see it while the Company was

operating the mine?—A. No, sir; *I did not go to the mine,* and did not see it.

"110. Q. What became of that vein when you did see it, after the Company abandoned the mine?—A. I have already stated, and now repeat, that *two years afterwards I denounced the mine.*

* * * * * *

"113. Q. When you say the vein is still there, you do not mean the rich ores are still there?—A. *Rich ores may be found, but nobody knows where.*"

If Torres' statement that he lost $9,000 in La Luz is of a piece with his statement that Del Valle lost $40,000 in that same mine, how much did Torres make?

We come now to Mr. Attorney General's specifications of the facts which he undertakes to prove by the witnesses and documentary evidence designated in the bill. And it is to be observed that he does not supply any of the necessary particulars of the general charges of fraud contained in the XVth paragraph, but says—

> "that the said documentary evidence and the said witnesses will enable your orator conclusively to show *the facts in the XVth paragraph of the bill alleged,* and also the following, which your orator says are the facts, to wit," etc., etc.

Specifications in the XVIth Paragraph of the Bill.

These specifications, as set forth in the XVIth paragraph of the bill, will now be examined.

> (1) "That there was no hostility toward said defendant La Abra Silver Mining Company on the part of Mexican officials or people, but that, on the contrary, their relations to its officers were friendly."

This allegation, which was to be conclusively shown by the witnesses and documentary evidence designated in the bill, is disproved by the press-copy book, which furnishes, in Exall's letter of July 14, 1867, to Garth (*Record*, 272), an epitome of the Company's case:

> "*The officials are getting daily more troublesome; their demands are all foolish and very unjust*, but we have to do the best we can with them and take things as quietly as possible."

The same letter-book shows the seizure of the Company's lower hacienda by the local magistrate (Soto) against the law and in collusion with the other local authorities, as detailed in Exall's letters of December 5, 1867, to the Prefect Olvera at San Dimas, and to Señor Del Valle at Durango (*Record*, 278, 279), and it also furnishes the opening chapter of Exall's imprisonment by Perez, and his unavailing appeal for protection to Olvera (*ib.*, 280, 281), which will be noticed more at length under specification (9.)

The following from De Lagnel's testimony will show that instead of the complainant's proving by this witness, as it promised to do in the bill, that there was no hostility, etc., it has proved the very reverse, *i. e.*, hostility to the United States and the Company of the most intense and inveterate kind (*Record*, 502, 503):

> "96. Q. In that examination before the Senate Committee on the subject of the Mexican hostility to the United States and Americans in general, you spoke of a scheme which General Butler was suspected of entertaining. What was that scheme? (Objected to as incompetent and irrelevant.)—A. In a general way, it was the occupation of lower California by purchase or otherwise. * * *
>
> "99. Q. You spoke in that same examination of a clerk that was in your employ, a Mexican. What was his name?—A. Sainz.

"100. Q. Referring to him you said in your examination before the Senate subcommittee, at page 95:

"'My own clerk, a young man who was employed in the store, a Mexican, born and raised in San Ignacio, 70 miles from the mines, had been educated in California and spoke English as well as I could. In talking with him one evening, discussing this very thing (General Butler's scheme), he just scouted the idea of the withdrawal of the French being due to the United States Government, and I tried to show him that without the United States, Mexico would never have got rid of the French; but he scouted it * * * I said, speaking to him: You ought not to give heed to these reports * * * because the Americans are friendly to you. They certainly have shown it in this late action of the government in assisting in ridding you of this foreign control. He said, *we hate them.* * * * *It was taught us by our fathers. They have told us all, and they keep at it.*'

"Now, what have you to say in regard to the hostility and prejudice that existed as a matter of fact in the minds and hearts of the Mexicans towards the United States and our citizens at the time you were there? (Objection by Mr. Lines.)—A. I am not prepared to give any answer to that. I merely mention incidents in my knowledge and leave you to infer yourself.

"101. Q. And those incidents are true?—A. Yes. I can see the picture before me now, that boy talking to me."

Colonel De Lagnel also told of an old man of more than average intelligence, who, when the subject of General Butler's reported scheme "to seize the upper States" was the topic of conversation, declared that while he was always glad to see Americans or anyone else who came with the right motive, "*the moment he was satisfied* they came there for the purpose of seizing their government,

or interfering in any way, *he would cut their throats.*" (Rep. 2705, Sen., 50th Cong., 2d Sess., 95.)

It is remarkable that the furious resentment which was aroused in the San Dimas district by those rumors of forcible annexation, and the fact that such rumors were in circulation there and were believed by the people, should be proved by the most intelligent and trustworthy witness that the complainant has produced; and this is all the more remarkable in view of the attitude of incredulity and scorn which the complainant's attorneys have assumed towards the existence of those rumors, and the feeling they aroused.

Having returned from Tayoltita to the United States in the spring of 1867, Colonel De Lagnel could not testify as to the immediate circumstances under which Exall abandoned the Company's property in the spring of 1868, but could and did reveal, however reluctantly, something of the hostile atmosphere and the perilous situation in which he left Exall when he himself went home.

In his testimony before the Senate subcommittee, Colonel De Lagnel had said that Soto, the local justice of the peace (with whom Exall had afterwards to deal), kept a wine shop and gambling place directly across the road from the Company's hacienda, which was much frequented by the Mexican miners in the Company's employ. Colonel De Lagnel was further examined in regard to this significant fact in his cross-examination in this suit, no attempt having been made by the complainant to prove by him, as promised in the bill, "that there was no hostility towards the Company on the part of the Mexican officials or people, but that, on the contrary, their relations to its officers were friendly." Colonel De Lagnel had evidently been very much prejudiced against the Company's case by "the double-column

book" which had been given to him by Mexico's counsel and which he had read before he was examined in the Senate investigation—the "double-column book" containing the infamous and now abandoned charges of "forgery," shortage in his army accounts, and convictions by court-martial against General Adams—and he seemed averse to say anything that had a tendency to strengthen the Company's case; but just on that account his testimony, where it is favorable to the Company, should have all the more weight:

"78. Q. In your examination before the Senate Committee you spoke of Soto selling mescal to the miners and others. Will you please explain what mescal is?—A. It is a product of the hemp.

"79. Q. In that same examination, you spoke of gatherings at his shop on Saturdays and Sundays, at which there was drinking and gambling, and you said that those proceedings would sometimes become saturnalian?—A. Well, they would last all night, and you would find them stretched out in the morning, the candles burned out and every one asleep.

"80. Q. So far as you know, did any of the miners in your employ frequent that shop?—A. I presume most of them did; I don't know. I never asked any questions. I never was there.

"81. Q. You spoke of Soto in that same examination as exercising a pernicious influence on the miners and as being hostile to the Company. What did you mean by that?—A. That is derived from hearsay, and not my own knowledge. As I say, I did not know the man except to pass him and bow to him. He would always bow respectfully to me, but with a countenance that indicated no love.

"82. Q. Let me ask you whether he was a magistrate or justice of the peace at the time you were there?—A. He was, yes, sir. He was elected, I believe, a judge by the people.

"83. Q. Before you left?—A. Before I left; I think so." (*Record*, 499, 500.)

At Tayoltita the miners were "the people." And on one occasion when De Lagnel, on account of military exigencies, could not get money from Mazatlan where he had it on deposit to pay the miners' wages, he and his associates were threatened with an "armed demonstration" with which De Lagnel thought that Soto himself was concerned.

Soto's interest in the miners' pay was explained by De Lagnel as follows:

"* * * If I referred to him, I don't recollect what I said, but if I referred to him *it was this: that, being a liquor dealer, he wanted the ready money to answer for his wine, and the gamblers wanted the ready money to lay down on the little green cloth.*" (*Record*, 500.)

In the Senate investigation Colonel De Lagnel had been asked whether the revenues and disbursements of the Company were a source of profit to Soto's business, and he had replied:

"I presume there was considerable profit. The ready money, from what I was told, and *my own observations day by day*, passed either to the man who dispensed the wine or the man who dealt in cards, and that the cessation of the stream of supply caused this *ill feeling* on the part of these people, and that these gamblers and others—I will not throw the whole burden on this old man, but *I thought he was in the plot;* that is, so far as that demonstration at the hacienda." (*Record*, 500.)

When the Company commenced to pay the miners mostly in supplies, the interference of the Prefect Mora was in Soto's interest, for when they were paid in provisions and goods they had little or nothing to spend at

his place in drinking and gambling. The opening sentence of Mora's order of June 3, 1867, shows that it was incited by representations which had been made by Soto. It was addressed to Soto in his official capacity, and opened thus: "From *your communication* this Gefetura has learned," etc. (*Record* 54, Exhibit Y.)

Returning now to De Lagnel's testimony in regard to the local judge (*Record*, 500, 501):

> "88. Q. * * * In what way did you connect this old man Soto with that hostile demonstration?—A. Simply from the fact that *his house was a place of resort*, and there must have been an organization, or plan or design of some kind, and they must have done it when they came together, and as *that was the only gathering place, and that is where the wine was dispensed*, I took it as a matter of course that he may have influenced them. I can not say that he did influence them. I did not hear him. I am only giving an inference.
>
> "89. Q. In that same examination you spoke of the attack on the Rosario and Candalaria mines, and you said that the mines were abandoned because of the attack and the murder of the engineer; whether more than one you did not know, but you knew there was loss of life. How did you know that? (Objection by Mr. Lines.)—A. I was told by *a man who was present* and who was afterwards employed by me."

In the Senate investigation Colonel De Lagnel said, referring to this murderous attack:

> "*Everybody knew about it.* I had workmen in my employ who were there at the time it occurred." (Rep. 2705, Sen., 50th Cong., 2d Sess., 108.)

He explained that while it was not "common rumor," as he understood the phrase, that American mining companies could not get along at all in Mexico—

"*The Americans connected with the companies, when I would meet them, would speak that way of the difficulties and adverse circumstances under which they labored.*

"Q. Was that at the time when you were employed at the mines?—A. Yes, sir." (*Ib.*, 108.)

And it appears from his account of the armed demonstration against La Abra Company's hacienda that the ringleader reminded the men of what had been done at Candalaria:

* * * "The young clerk who was in attendance at the store (and who understood Spanish) was standing then in front of them, and I was sitting back of him (and he) said to me, 'Colonel, if you are going to do anything, you had better be quick about it.' I asked him what he meant. He said that the fellow who was talking *was inciting these men to make an attack upon me, and he told them not to wait.* The clerk told me that *the man was talking about the Candalaria* affair, which had taken place before my time there, I believe. They had risen there and killed some officer and sacked the place." (Rep. 2705, Sen., 50th Cong., 2d Sess.)

Colonel De Lagnel's conviction as to Soto's hostility to the Company and as to the part he played in the threatened attack on the hacienda, was expressed very clearly in the Senate investigation, and the incident is set out at length in the minority report of the committee under the head of "*New evidence in regard to the justice of the peace at Tayoltita.*" (Rep. 2705, part II, Sen., 50th Cong., 2d Sess., 16–19.)

"Q. I understood you to say that this man Soto was a pestiferous sort of a man, or you used some characterizing word?—A. *I considered him so.* I thought he was an *underhand*, a very quiet man. He did not show anything exteriorly, for he was always courteous when I saw him, but I thought he was *secretly undermining the whole affair.*

"Q. Why did you think that?—A. *I was so informed.* I think it was attributed to *him* and others—the excitement among the workmen when the money gave out, when *they came in, each man armed with a machete hidden under his blanket.* * * * I was told that *Soto was at the bottom of this affair;* that he was *inimical to the establishment,* and *to me being connected with it,* for what cause I do not know, and that this evidence of bad feeling arose not so directly from the position in which I was placed, but from *the desire of the money that was falling and from the selling of the mine,* etc. * * *

"Q. Now, if a *Government official* was engaged in that kind of operation it would be very likely to excite and inflame these people and make them antagonistic to you?—A. *Anybody who had influence with them.*

"Q. Yes; and if anything of that kind came from a Government official it would be very likely to excite their animosity and hostility to that Company, would it not?—A. *I have no doubt of that.*

"Q. Why did you think this came from Soto, that he was the man who was doing it?—A. Because he kept a store *which conflicted to a certain degree with the store at the hacienda.* They were only *across the roadway,* and probably *not 100 feet apart.*

"When I went down I supposed that the domain belonging to the Company would be under my control wholly. When I arrived there *I found this house up;* this man's domicile. *He owned the house,* and I never clearly understood my relations with him, *how far I dared with safety to the interests of the Company interfere with him.* I would rather have had him away entirely, but I hesitated to do anything to militate against the interests of the Company.

"*I know he influenced these people, for these weekly entertainments were held in front of his house, and the liquor, the mescal, was sold in his little shop or store.*" (Rep. 2705, Sen., 50th Cong., 2d Sess., 91, 92.)

Alluding to the excitable disposition of the miners,

especially when under the influence of "mescal," and to a visit he made to Mr. Rice's hacienda at San Dimas, when the inmates "were expecting an attack at any moment, and were prepared to resist it," Col. De Lagnel said:

> "These explosions only occurred, I may say, when they were possibly half full of liquor, but that is very frequently. *That night I could hear as I lay down to sleep the cries of these people blackguarding and cursing the people in that hacienda;* but there is some excuse to be made for that class of the population. When they were sober I never had discourtesy from any of them." (Rep. 2705, Sen., 50th Cong., 2d Sess., 109.)

But the morning the Company's miners came armed to the hacienda, they were all sober (*Record*, 515):

> "244. Question. So that on this occasion drink did not seem to be the exciting cause of the demonstration?
>
> "Answer. No, sir; the workmen who came up armed were all sober; every man was perfectly sober."

The next specification in the XVIth paragraph of the bill is as follows:

> (2) "That 'prorogas,' or extensions of title, were frequently granted to said Company, and that said Company received from officers of the Republican army special military protection for its property and for the mule trains belonging to contractors for said Company during the war between the Republican Government of Mexico and the Imperialists."

This specification might be proved by the complainant, or admitted by the respondent, without at all affecting the issue in this suit; for the Company never complained of the Mexican officials who granted "prorogas," or of those officers of the Republican army who neither

seized nor allowed their subordinates to seize the Company's supply-trains. Of course, the Company's complaint of seizures and detentions did not mean that there was always a failure of protection or that none of their trains ever got safely through.

The next specification in the XVIth paragraph of the bill is as follows:

> (3) "That no onerous taxes were enforced, and that but one loan, and that of a general character, was levied upon the Company, which Company refused payment with impunity, under the plea of lack of means."

But this specification, instead of being proved, as promised in the bill, is actually disproved by De Lagnel on his cross-examination in this suit, where his attention is called to one of his letters in the Company's press-copy book (*Record* 610):

> "41. Q. Now, at the top of page 289 (Ex. B, *Record*, 253) you say, 'we are dragging along in the dark, and hoping, but not knowing, that any advantage will be derived from the change of rulers. One thing appears clear—that we will not have to pay duties to Imperial Customs and then *do the same* to the Liberal officers.' What did you mean in regard to paying duties to the Imperial and the Liberal officers?—A. The French and Imperialists held the port (Mazatlan) and *collected duty there*, while the Liberals held the country in which the mines were placed and would *demand a tribute oftentimes on the way up*, or sometimes."

It appears from the deposition of Pedro Echeguren, one of the leading merchants of Mazatlan, in support of the Company's claim before the Commission, that—

> "Much of the Company's supplies, machinery and even money, *was received from the steamer or vessel direct*, and their mule teams (trains) packed at the

wharf for their mines, without being consigned to any house here. This was going on while we were doing business for the Company, but I can not say what proportion or amount of such supplies were so received." (*Record*, 104, ans. to ques. 8.)

A notable instance of the detention of one of these supply trains is given by an unimpeachable witness—Wm. G. S. Clark—who himself advanced the amount demanded by the military authorities (*Record*, 62)—a payment which is proved by the books of the Company produced in this suit by the Mexican Consul-General Coney. (*Record*, 753.)

The remaining part of this specification—as to the loan and the Company's refusal to pay it—is also disproved by Colonel De Lagnel's testimony. The "loan" in question was levied by Colonel Valdespino, who had arrived at San Dimas with a detachment of "Liberal" cavalry in wretched condition, and the Company's share of the levy, or what Colonel De Lagnel thought the Company ought to contribute, he paid in kind—mohair and cotton goods, blankets, and hats—as told in his letters (*Record*, 236, 237), and in his examination in this suit (*ib.*, 488):

"They wanted food and *clothing* and money, and they wrote to me saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one-quarter upon us, and the other half was to be borne by the citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, and didn't intend to give it even if I had it. I was advised to do so, or *they would come there and rob the place, as it was said to be the habit.*

"Q. By whom were you advised?—A. I was ad-

vised by a man named Norton, *who had married a Mexican wife.*

"Q. The same man who was your clerk?—A. Exactly. *He had been in the Liberal service.* He said to me, 'It will be to your interest to do it; *they will sack this place if you don't.*' * * *

"Q. What was the result?—A. I sent them a few goods—*some stuff they wanted*—blankets and hats. I sent them some goods, cotton goods, and wrote a courteous note to each one of them (the Prefect and the Colonel), expressing regret that I could not comply with their wishes, and stating that we had no money, because the mines had never turned out a dollar. They wrote me an acknowledgment and sent a receipt for the goods and courteous acknowlments. That was the end of it."

Does this testimony of Colonel De Lagnel justify the complainant's allegation that the Company "refused payment with impunity?" Were not cotton goods, blankets, and hats of more use to Valdespino and his ragged troopers on their brokendown mules, in that isolated and mountainous region, than money? And had not these supplies cost the Company money? What blight is it that prevents the complainant from making the simplest statement with any approach to accuracy or candor? And why in a solemn proceeding like this should one witness after another have been produced to prove specific allegations which their testimony shows to be unfounded?

A strong side-light shines upon the situation at the mines, and in Mexico generally, from this Valdespino incident (although it is of but little importance taken by itself), and shows the nature of the complainant's allegation that the Company refused payment with impunity. In his testimony in the Senate investigation

Colonel De Lagnel said that he "sent the little gift over" because he was advised—

> "That if we did *not*, these men would come into the little town or pueblo settlement where I was, and *would not only interrupt the work, but possibly break in and rob the warehouse and take out the property.*" (Rep. 2705, Sen., 50th Cong., 2d Sess., 93.)

And as it was, the Company's operations were interrupted, because—

> "The men had left their work, and *their families; some of them had fled from the village in alarm.* They heard this force was there and coming, and *knowing the habits of their own people better than I, had taken that course of procedure.* * * *
>
> "Q. These were the Mexican forces?—A. *Mexican forces.*
>
> "Q. *And they were running away from their own forces?*—A. *Yes, sir.*" (*Ib.*, 94.)

In connection with this incident, it should be borne in mind, when the testimony which was submitted to the Commission in regard to the seizures and detentions of the Company's trains is considered, that it was "forces" like these, with such necessities and habits as theirs, that the Company's supply trains had been liable to encounter between Mazatlan and the mines since the fall of 1865.

And it should also be noted that in his letter to the Prefect, telling him why he sent goods instead of money for Colonel Valdespino, Colonel De Lagnel spoke of "thousands and thousands of dollars, most of which have been spent among the needy of this district, and *a considerable part in duties paid into the treasury of the district under whose flag Colonel Valdespino is serving.*" (*Record*, 236.)

Complainant's counsel said in his brief on the final hearing below (p. 118):

> "The face put upon this Valdespino matter by Granger and Exall in their depositions is thus demonstrably false. It was not the mailed hand of military power *but the hand of supplication* (the italics are Mr. Maury's) that Valdespino stretched forth, beseeching assistance for his suffering soldiers. To seek to give a different version of the transaction was criminal in Granger and Exall."

But Valdespino said to the Prefect: "*You will levy.*"

Judge Black, in his argument before the Umpire, said of Valdespino's letters:

> "The glove was soft, though the hand within was of iron. It was a very polite request by an officer who had a regiment of soldiers behind him."

Exall's and Granger's testimony in regard to this incident shows on its face that it was hearsay. The event, which in itself was of little importance, happened *before their arrival in Mexico*, and they did not pretend to speak from personal knowledge. But if it was "criminal" in them to represent Valdespino's hand as "the hand of military power," instead of "the hand of supplication, stretched forth, beseeching, etc.," Judge Black must have been a "criminal," too.

But Valdespino's levy was not by any means the only one made upon the Company's property. Colonel De Lagnel testified (*supra*) that "the Liberals would demand a tribute *oftentimes* on the way up, or *sometimes*." One of these demands, to which we have already alluded, is described by Wm. G. S. Clark, in his deposition of May 14th, 1870, in which he mentions the name of the Mexican officer (Donato Guerra), who levied the "tribute," the amount ($600) *which the deponent himself paid to Guerra*, the detention of the train "for four

days by the said acts of the military," and some of the serious consequences that ensued to the Company's machinery for want of a barrel of oil that was on the intercepted train. But, more significant still, this witness tells in detail what Colonel De Lagnel did in the matter, for it was during his superintendency that payment of this "tribute" was enforced (*Record*, 62):

> "That said superintendent of La Abra Company came back to Comacho (where Clark lived) a few days after the loss of the said carga of oil, and tried in every possible way to procure permission of the said commander of the Liberal troops of that district to visit the port of Mazatlan, or the lines of the French, with a view to making an effort to gain admission to the Mazatlan market, in order that he might supply the place of said oil, so much needed by said Company, which had been lost or stolen while in the forced possession of said General Donato Guerra, but he was refused such permission; and deponent further says that *he heard said superintendent of La Abra Company complain*, at the time, that even that circumstance, trifling as it might appear to those not acquainted with the uses and value of such oil for machinery, *had caused a complete paralysis in the work of putting up said machinery at their mining hacienda, as the same had become wet and rusty, in transporting it to the mines, and could not be put in working order in the absence of that material.*"

Of course it was perfectly proper for General Guerra to prevent Colonel De Lagnel from going through the Liberal lines to Mazatlan, which was then in possession of the Imperialists. The wrong was in detaining the Company's train and levying "tribute."

Being a resident of Comacho, in the Mexican State of Sinaloa, Clark could have been examined (just as Del Valle, Avalos, and Granger were) by the Mexican authorities. *So could General Donato Guerra*, to whom

Clark made the payment of the "tribute." This right and the long-continued opportunity of examination on the part of the Mexican government make all that the complainant's counsel says about the vagueness and generality of the allegations of the Company's witnesses before the Commission seem strained and fanciful, and exceedingly suggestive of the want of really substantial objections.

The Mexican District Attorney, Gaona, whose testimony was taken in this suit, thought, without being sure, that *Clark was examined by the Mexican authorities at Mazatlan, in regard to his aforesaid deposition* of 1870, in 1877, *a year after the Commission had adjourned*, but the fact that no copy of his re-examination was included in "the newly-discovered evidence" speaks for itself. And, as previously observed, the Company's books corroborate his testimony.

The next specification of the XVIth paragraph of the bill—

> (4) "That no mule trains were ever taken from the Company and that it never owned any"—

has certainly not been proved, either by the documentary evidence or the witnesses designated in the bill.

It is immaterial whether the mules were owned or hired by the Company. Bartholow, Cole, Clark, and Loaiza say that the Company in Bartholow's time owned some of its mule trains, and one of Mexico's new witnesses (Sundell) says, on hearsay, that "sometimes a nominal transfer was resorted to, to prevent interference of the military authorities." (*Supra.*) It was not the mules themselves, but the machinery and supplies they carried that were of most importance to the Company in its extensive and costly operations at Tayoltita. Even when nothing was taken, the mere detention of the sup-

plies was a serious injury, for it was not only mining operations that were going on at Tayoltita, but various kinds of construction requiring tools and materials, as well as miners' supplies for the Company's store and provisions for the hacienda. Parts of the machinery that had been carried over the mountains on mules lay rusting at Tayoltita, and could not be put in place for want of a barrel of oil that was sent from Mazatlan on one of the intercepted trains, as has already been mentioned.

But nothing was allowed by the Umpire for these seizures or detentions. They do not in any way affect the award, for whether they cost the Company much or little, or whether the Company owned or hired its mules, the amount, whatever it was, went into the Company's total actual expenditure, which, with interest, was all that the Umpire allowed except for the ore on the "patio." The Umpire regarded as an expenditure the amount received from ores reduced, because, according to Exall's testimony, it went into the Company's business at Tayoltita. That portion of the Umpire's award bearing on this point is as follows:

> "The evidence of George C. Collins, with regard to the amount invested, is clear and straightforward. He states it to be:
>
> | | |
> |---|---|
> | From the subscriptions and sales of stock | $235,000 00 |
> | Lent and advanced | 64,291 06 |
> | Due for rent, expenses, salaries, law expenses | 42,500 00 |
> | | $341,791 06 |
>
> "Any so-called 'forced loans' and contributions *must have been paid out of this amount.* To charge them therefore, separately, is to make the same charge twice over. The Umpire takes occasion, however, here to observe that *a forced contribution*

exacted from a train of goods, the property of the Company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. exacted upon a train of goods, the property of the Company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the headquarters of the Company, and should be in the same proportion as that imposed upon all the inhabitants of the country. *The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations can not proceed.**

"To the above-mentioned amount of $341,791.06 should be added $17,000, which is shown to have been the amount derived from reduced ores." (*Record*, 9.)

This branch of the case is treated more in detail, under the head of "*Seizure and confiscation of the Company's Mule Trains*," in the minority report of the Senate Committee, No. 2705, part II, 50th Cong., 2d Sess., pp. 23–27.

The next specification of the XVIIth paragraph of the bill—

(5) "That its (the Company's) employé was murdered by another of its employés, who was promptly tried, convicted, and shot by the military authorities"—

has no bearing on the question at issue. If it is Grove who is referred to as the Company's employé, his supposed murderer was convicted and shot for the murder of a *woman*, presumably a Mexican, and after he was sentenced he confessed to the part he had taken in murdering Grove, and gave the names of two of his confederates, who, so far as the Record shows, were never

* This evidently refers to the instance related in Clark's testimony (*supra*).

punished. But their escape may have been due to the disturbed condition of the country. (*Record*, 220.) Nevertheless, it is rather singular that the execution of one of Grove's murderers for another murder should tally with the remarkable statement of the Hon. John W. Foster, late United States Minister to Mexico, published in the "Foreign Relations" of the United States, of which this court will take judicial notice:

> "Since that note was written (to Mr. Lafragua in 1874) more than four years have passed, and the list of murdered Americans has considerably increased, but up to the present date I have been informed of permanent punishment having followed in but *a single case*, and that *when a Mexican was murdered* at the same time." (The italics are Mr. Foster's. For. Rels., 1878, p. 650.)

The evidence before the Commission tended to show that *two* of the Company's train masters were murdered, but the murder of Grove, who was an American, was vigorously followed up by General Bartholow and the Mexican Colonel Veja; while nothing seems to have been done in the other case. (See Gamboa's deposition, *Record*, 60; Clark's, 63; and Loaiza's, 72.)

The next specification of the XVIth paragraph of the bill—

> (6) "That no assault was made upon its (the Company's) buildings"—

is also immaterial, for no such assault was the basis of the award. The Umpire found (*Record*, 8):

> "That *the local authorities at Tayoltita and San Dimas*, far from affording to the claimants that protection and assistance which had been promised them by the Mexican government, and to which *they were entitled by treaty*, not only showed themselves a spirit of bitter hostility to the Company, but

> encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of *these authorities* was such, and the incessant annoyance and interference with the claimants was so vexatious and unjustifiable, that the Umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise."

But, again, neither the documentary evidence nor the witnesses designated in the bill prove that no assault was made upon the Company's buildings. The only one of the designated witnesses who lived at Tayoltita while the Company was working there, was De Lagnel, and he left the place and the country nearly a year before Exall. So that the evidence which was before the Commission showing or tending to show that an assault was threatened or actually made upon the Company's buildings, remains unimpeached. (*Record*, 52, 154, 171.)

Avalos (the witness for whose credibility Captain Dahlgren vouched so unreservedly) testified (*Record*, 52):

> "I was present at the hacienda of the said Company one night—I think in the latter part of 1866—when an armed mob of Mexicans charged upon the hacienda of the Company, and the Americans there were badly frightened, and retreated back of the hacienda and armed themselves for defense. *I was inside with them.* The Mexicans, as I afterwards found out, thought the Americans too well prepared to meet them, and did not follow up the charge at the time."

The "armed demonstration" described by the complainant's witness, De Lagnel (*supra*), comes pretty near an "assault."

It can not be said that there was no assault on the buildings, because Sundell or Torres or any other non-resident had never heard of it, in view of the fact that Sundell, although so intimate with Granger, swears that he never heard of his contract with Gaona, to the terms and execution of which Gaona himself testifies, and of the other fact that, although many witnesses were examined at San Dimas, and there had been quite an excitement over the arrival of General Adams with an escort, Torres had never heard that a Commission was in session at Washington during so many years to examine the claims of citizens of the United States against Mexico and of citizens of Mexico against the United States, or that La Abra Company had presented a claim against Mexico to that Commission, or that his friend and partner, Granger, had ever been examined as a witness for Mexico in the case. (*Record*, 559.) In this way the complainant could prove by Torres that there never *was* any Commission; that Granger never was examined, that Scotty never was robbed, and that Grove never was murdered! (*Record*, 551.)

The next specification in the XVIth paragraph of the bill—

> (7) "That in only one instance did the Company lose anything by robbery, and that said robbery was committed on the highway by armed bandits, and that the military authorities made every effort to find and punish the offenders"—

is not proved by the documentary evidence nor by the witnesses designated in the bill.

As stated above, Torres never heard of Scotty or of Scotty's robbery. He swore it could not have happened *because there never was any robbery in Tayoltita*, and there could not have been any robbery in Tayoltita, because if there had been he would have heard of it.

Clark's testimony on that subject is unimpeached. The "robbery" was committed or the "prestamo" was collected near Camacho, where he lived, "by an armed party of the said military," and he went with Scotty to the commanding general and made the representations set forth in the deposition. (*Record*, 63.)

The Mexican Commissioner, Señor Zamacona, was inclined to think that the levy on Scotty was "a duty on circulation," as only a part of the funds in his possession was taken. (Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 35, 36.)

But General Bartholow deemed it a robbery, and entered the amount, $1,178, in his ledger under "Robbery Account." (*Record*, 745, "balances of accounts," third item from the bottom.)

The Umpire, however, made no separate allowance for this item, because it entered into the Company's actual outlay, which formed the basis of the award.

The next specification in the XVIth paragraph of the bill is—

> (8) "That the difficulty with the local authorities in June and July, 1867—(styled by the superintendent (Exall) in a letter to the treasurer (Garth) 'a little spat with the officials which was gotten through without much trouble')—was due to the cause stated by the witnesses for the defense, to wit, that the superintendent had, as expressed by him in the letter above referred to, 'reduced the cash payment from one-third,' and that the said difficulty occasioned no inconvenience to the Company."

This pretends to quote all of Exall's reference, in his letter of July 13 and 14, to "the difficulty with the local authorities in June and July, 1867," but it omits the following significant sentence, *which is to be found in the continuation of the same letter*:

"The officials are getting daily more trouble-

some; their demands are all foolish and very unjust, but we have to do the best we can with them and take things as quietly as possible." (*Record*, 272.)

Now, as to the *cause* of the difficulty: The Government says it was because "the superintendent had, as expressed by him in the letter above referred to, *reduced the cash payment from one-third.*"

But that was no legal ground for the intervention of the Prefect—far less for such interference as that of which he and the local justice were guilty.

The Mining Ordinances (Rockwell's Spanish and Mexican Law, vol. I), provided that the miners should not be *compelled* to take their pay in goods (chap. XII, sec. III), but left them free to make contracts (sec. X), under the general supervision of the members of the "deputacion de mineria," established in each mining district, *who were vested with exclusive jurisdiction* (chap. III, sec. IV), and were required *to act jointly* (chap. III, sec. III), and *to give both sides a hearing* in matters of disagreement between the miners and their employers (chap. III, sec. V).

There was nothing in the Mining Ordinances to prevent the miners from working, if they chose, for goods or supplies. The Company's expenses had been enormously increased by the rise in the rates for packing and by the losses, exactions and delays connected with the seizures and detentions of their trains. They had a store stocked with supplies that the miners needed and were willing to take, temporarily at least, for their labor, rather than remain idle. If the miners had been unwilling to work, because they suspected that the Company had abundance of ready money, but was determined not to pay any of it out in wages, and if trouble had ensued, there would have been a case for the "deputacion de mineria," whose

intervention was intended to make for peace and the best interests of all the parties.

A copy of the Prefect's order of June 3d, 1867, addressed to Judge Soto, was furnished in July, 1872, to the judge of first instance at San Dimas by the Mexican District Attorney, Hernandez, who was obtaining evidence in opposition to La Abra Company's claim while the Commission was in session at Washington, and is printed in the *Record* at pages 124 and 125. It directed Judge Soto to notify the Company, *through his court*, "that, at least, they should carry out their last contract; that is, that they shall pay them one-third in cash; and, if not, *that they give up the mines to the operatives, to be worked by them as best they may.*"

Being doubtless familiar with the Mining Ordinances, the Mexican Commissioner, Zamacona, contended, in his opinion on the Company's claim, that, by a *mistranslation*, "what was simply a well-intentioned notice or admonition by the local authorities, *assumed the aspect of an act of despotism or a threat against property.*" But he did not contend that the orders of Soto, on whose representations the Prefect's order had been issued, were mistranslated. Mora's order was dated June 3d, 1867. The next day Soto issued the following order (*Record*, 124):

> "SECOND CONCILIATING COURT OF TAYOLTITA.
>
> "In consequence of the official communication of *yesterday*, the 3d instant, received from the gefe politico of San Dimas, I notify you that if you do *not intend to continue working the Abra mines upon the system of thirds, as formerly, that you* FORTHWITH VACATE THE MINES, and allow the operatives to work them for their own account, and that they may lose no more time."

That order from the nearest judicial authority, who should have protected the Company in its legal rights

(and surely none the less if it was in financial difficulty), was followed next day by this other (*ib.*, 124):

> "SECOND CONCILIATING COURT OF TAYOLTITA.
>
> "This court has been informed to its great displeasure that you have not deigned to reply to a communication which was addressed to you twenty-four hours since. I therefore notify you *to come to terms with the operatives about the work* WITHIN TWO HOURS, and, *if no agreement is made by them*, that *you vacate the mines*, that they may lose no more time.
>
> "Liberty and Reform.
>
> "(Signed) GUADALUPE SOTO.
>
> "TAYOLTITA, *July* (*June*) *5th, 1867.*
>
> "To the Superintendent of the
> Abra Mining Company, Present."

Neither Moro nor Soto had any legal right to intervene in the capacities in which they intervened, even if the Company had been in debt to the miners for wages. What they did was a piece of despotic lawlessness, the very thing which Señor Zamacona said it had the "aspect" of being. Judge Black's remarks on this subject, in his argument for the Company before the Umpire, are printed, under a stipulation, on pp. 746–748 of the *Record*. The following is an extract therefrom:

> "Before any discussion of the effect of these extraordinary papers, it must be considered that by the laws of Mexico the *gefe politico* had no jurisdiction or authority whatever in any matters of dispute between the operatives of a mine and the owners of the same. The *deputacion de mineria*, established by law in every mining district, alone had jurisdiction in such cases, and the interference of the *gefe politico* or the local judge was of itself an arbitrary and illegal act. If the superintendent had failed, as is falsely pretended, to fulfill his contract with the operatives, they had their remedy under the mining laws, which are summary in their action. If the Company owed the men for their labor, they had the

means of coercing payment in the most peremptory manner, and there was sufficient property to satisfy any judgment that might have been rendered."

But there is no trace in the orders of any claim of indebtedness on the part of the Company to the miners. The official translator of the Department of State has made a translation of the orders, which, with the consent of the Government's counsel, is given herewith:

"OFFICE OF THE POLITICAL CHIEF
OF THE DISTRICT OF S. DIMAS.

"This office has learned with regret, through your communication, what abuses are committed by those American gentlemen, who, the first time, agreed to pay their workmen entirely in coin, and the second time to pay them half and half, and the third to pay them a third part (in money). You will notify them, in your capacity as judge, by my order, that they must carry out the last agreement at least—that is to say, they must pay one-third in money. *If they fail to do this, they must leave the mines, so that they may be worked by the miners to the best of their ability*, for neither do the mining ordinances provide that miners may be paid entirely in goods, nor does the Government allow such abuses, and it is tired of receiving thousands of complaints on this subject.

"You will bring the contents of this communication to the notice of the American citizen who is in charge of the mines over which you have jurisdiction.

"Independence and Reform.

"M. MORA.

"JUNE 3D, 1867.

"To the Citizen Judge Guadalupe Soto,
sole Conciliator of Tayoltita."

"SECOND CONCILIATING COURT OF TAYOLTITA.

"In pursuance of a communication which I received yesterday from the Political Chief of San

Dimas, I hereby notify you that, *if the work of the Abra Company is not to be continued according to the system of one-third* (*i. e.*, ⅓ in money) *as heretofore*, YOU ARE TO VACATE THE MINES AT ONCE, so that the miners may continue to work for their own account, and may lose no more time.

"Liberty and Reform.

"GUADALUPE SOTO.

"TAYOLTITA, *July* (*June?*) *4th, 1867.*

"To the Citizen Superintendent
of the Abra Company, Present."

"SECOND CONCILIATING COURT OF TAYOLTITA.

"This court sees, to its great annoyance, that twenty-four hours have passed since it sent a communication to you, and that you have not deigned to answer it. Wherefore this court notifies you that you are to make a suitable arrangement with the miners as regards their work, WITHIN TWO HOURS, and if they do not agree thereto, *you are to vacate the mines*, in order that the aforesaid miners may lose no more time.

"Liberty and Reform.

"GAUDALUPE SOTO.

"TAYOLTITA, *June 5th, 1867.*

"To the Citizen Superintendent
of the Abra Company, Present."

Exall says that Moro and Soto were trying to drive the Company out of the mines. I quote from his deposition for the purpose of corroborating it on this point by other proofs. (*Record*, 153):

> "There was no such failure to comply with our contracts with the laborers; that is all a hatched-up story—a mere excuse for driving us away—which has no foundation in truth."

He then tells how laborers had flocked to Tayoltita, hearing that the Company was rich and was paying large wages, and that some of these newcomers were turbulent

characters; how, when the work of construction was finished, the force employed by the Company was necessarily reduced; and how the Company's former employés, when their money was gone, applied for re-employment:

> "They were dissatisfied, or pretended to be, at my refusal, and were readily joined by those mischievous Mexicans and politicians still remaining about Tayoltita; and the said prefect, or jefe, and local judge made complaints because these ignorant and turbulent characters were not employed, and they became very hostile. * * * And said Moro and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased." (*Record*, 153, 154.)

Mora interfered again in July when the Company's superintendent attempted to exercise his indisputable legal right to reduce his force or suspend work altogether for a time in the mines. In the same letter to Garth (July 13 and 14, 1867) cited in the specification of the bill now under discussion, Exall (after mentioning his efforts to employ miners by the share or by the carga) said:

> "If I am not able to get men in the other mines, *I am privileged by the mining laws of the country to stop working in mines 4 months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of the privilege.*" (*Record*, 271.)

It seems, also, from the same letter, that he had already suspended work at the mines, for a few days, although he was running the mill night and day. (*Ib.*, 271.)

Whereupon the Prefect, ever intent on dispossessing the Company or frightening it away, had, on the 10th of

July, written the following letter, which concludes with a threat that must have gone like a stab to the heart of the superintendent:

"OFFICE OF THE POLITICAL CHIEF
OF THE DISTRICT OF SAN DIMAS.

"It having come to the knowledge of this office that you have brought the work to a standstill in your mines—

"I hereby tell you that such was not the agreement which you made with me. I therefore think that you pay no regard to your word. If, however, you do not wish to work yourselves, *give permission to the men to take ore from the mines, because I will not be responsible for the evil consequences resulting among people without employment.*

"Independence and Reform.

"M. MORA.

"S. DIMAS, *July 10th, 1867.*

"To the Citizen Representatives
of the Tayoltita Mines."

(The foregoing is the translation furnished by the official translator of the Department of State. For the translations which were before the Commission, see *Record*, 54, 124. The sense is substantially the same, and Mr. Tripler, the official translator for the Commission, seems to be justified in the sharp retort which he made to Señor Zamacona in the letter which is printed in the *Record*, 747, 748.)

This threat of July 10th was doubtless one of the things that Exall was brooding over when he said to Garth on the 14th (*Record*, 272):

"The officials are getting *daily* more troublesome; their demands are all *foolish* and VERY UNJUST."

In face of such lawless proceedings as these, on the part of the officers of the law, which were subversive of

the very foundations of property, and therefore of civilized society, the complainant alleges that "the difficulty with the local authorities in June and July occasioned *no inconvenience* to the Company."

The fact that the Company was in the power of such officials made the continuance of its work impossible, and convinced Exall (as he said in his explanatory affidavit of May 1st, 1878, *Record*, 669), "that it was a mere matter of time when they would be driven out, and compelled to abandon and lose all their interests there." This prospect, unfortunately for his reputation, set him to thinking how, through his British friend, Granger, who had become Mexicanized, and was living with Judge Soto's step-daughter, Cecilia, some advantage might be secured for himself when the Mexicans should get hold of the Company's property.

But now it will be shown from the evidence that Exall told the truth when he said, as a witness for the claimant, that the local authorities attempted to make him "employ everybody who would work, or employ no one, which they knew would ruin the Company." (*Record*, 154.)

In his examination before the Senate subcommittee, Elder, a witness for Mexico (one of the witnesses named in the bill who has not been produced by the complainant in this suit), testified as follows:

> "Q. Do you know anything of the troubles that occurred between the superintendent of La Abra mines and the authorities about July, 1867; if so, state what you know in regard to it?—A. Yes, they served a notice on the Company that *they wanted them to work more men; that they wanted them to put more work on the various mines.* (Rep. 2705, Sen., 50th Cong., 2d Sess., 565.)

This, be it remembered, belongs to the "newly-discovered evidence," and corroborates Avalos, one of the Com-

pany's witnesses in the original trial, who testified as to Mora's personal intervention at Tayoltita, as follows:

"At another time—I think in the month of July, 1867, when I was engaged in bringing down from the mines to the hacienda the ore belonging to La Abra Company—I met all the Barreteros, and men employed in and about the mines, going down to the hacienda, and the Barreteros and all the other men stopped and talked with me, and they all said *an order* had been sent up to the mines by Marcos Mora, gefe politico of that district, *to stop work, and ordering them all to Tayoltita.* When I came down to the town, in the evening, the gefe was at the house of Guadalupe Soto, and I heard the gefe, Marcos Mora, tell these men, a very large crowd of them, that the Company did not work as he, the gefe, wanted them to work, *and employ all the men who were out of work at Tayoltita,* and that *he would not let any of them work if they did not employ all of them, and work all their mines at the same time, as he had directed them to work;* and he said at the same time, that *he was going to take the mines away from the Company and give them to all of the people, to work them as they pleased;* and that night, I remember well, I did not sleep at all, for the words used by the gefe politico to the crowd of miners were well intended, and had the effect, to incite the Mexican miners and men out of employment to riot, *and perhaps to something much worse than that,* and I expected serious trouble that night for the Company.

"I do not know how the Company settled the matter, or how it was that 'La Abra Company' stayed in the district as long as they did after that affair, for I knew the authorities were determined to get rid of them, from all I could hear whispered about *by Mexicans out of employment, who seemed to be in with the gefe and juez in getting the Company out.* I know these troubles went on from time to time until the spring of the year 1868, when the superintendent, Exall, abandoned all the mines and the hacienda and metals and stamp mill and everything

> they had there, and the Company has never been there or done any work in San Dimas district since that time." (*Record*, 52.)

Avalos is the witness to whose honesty, fidelity, and intelligence Captain Dahlgren testified so strongly in the Senate investigation, saying that after years of service and intimate association, he "never knew him to steal a sixpence or to lie." (Rep. 2705, Sen., 50th Cong., 2d Sess., 667, 711.) It should be also noted that Avalos' *second* deposition for the Company, repudiating an alleged deposition which the Mexican authorities had forwarded as his to the Commission, was witnessed by his employer, this same Dahlgren, and by H. Diaz Pena. (*Record*, 95.)

Mr. Ralph Martin, a man of means and high character, who succeeded Mr. Rice as superintendent of the Durango's Company's establishment at San Dimas, said of Avalos (*Record*, 165):

> "He was an honest, reliable man, *of good character for truth.* He was regarded there, as I believe, by all who knew him, as an honest, industrious and *reliable* man."

Chavarria, an eminent Mexican lawyer, of Durango, *who accompanied Mora on that visit of his to Tayoltita*, says (*Record*, 81, 82):

> "That in July or August of 1867, the year referred to in the question, he was at San Dimas on private business, and also at Tayoltita, as he has before said; that he went to the mines for the purpose of seeing them, and that *he conversed with the gefe politico upon their condition;* that in consequence of these he became satisfied that both *that officer* and the *mining people* were strongly bent on *annoying and driving the Abra Company away*, and with which they were *continually provoking quarrels: that officer* and some of the workmen stated that *they*

believed the Company to be annexationists; that it was therefore hateful to Mexico, and they thought it best to drive it away from that mineral, anyhow; that, for this purpose, the authorities instigated the laboring people, on the pretext of their wants, not to work for the Company; that he further knew that the Company's ores were frequently stolen, and that it was not legally protected by the Gefetura, where the superintendent usually made fruitless complaints of the thefts; that that officer (the gefe) also gave him, deponent, to understand that *he had a special interest in the expulsion and despoliation of the Company, in which case he intended to denounce the mines at Tayoltita,* and he offered deponent a share in them, which deponent refused, and reproved his conduct in permitting the operatives to steal the ores, which they did with impunity, to the great responsibility of the authorities of that department, who, either by their connivance, or indolence, compromised the honor and good name of the Republic. * * *

"11th. State whether Marcos Mora, the gefe politico, was visited on the second night of their stay at Tayoltita, in July or August of 1867, at the house where they were stopping, by any of the employés of the Abra Company, or any of the head Mexican workmen who had been in the employ of the Company. Also state all that then and there took place between the said employés and the gefe, Mora, as to their continuing in the Company's service; state what the parties named did and said in your presence.

"Ans. That all the matters referred to in the question are true; that the greatest disorder prevailed upon that occasion; that *the head miners, by order of Marcos Mora,* mutinied against the Abra Company and the superintendent; they refused to work any longer in the mines, which resulted in the continuance and increase of the robbery of the ores, which was openly carried on in daylight and in the the presence of the superintendent." (*Record,* 81, 82.)

Mora's order and letter should be interpreted in the light of his avowed hostility to the Company, which is proved by many witnesses, among whom is one for whose respectability, regard for truth and courage in declaring it, complainant's counsel has vouched so eloquently, Juan Castillo del Valle, from whose second deposition we make the following extract:

> "11th. State whether you have heard it publicly reported that Marcos Mora, who was gefe politico at San Dimas in 1866 or 1867, was strongly prejudiced against La Abra Silver Mining Company and Guadalupe Silver Mining Company, and endeavored to drive them out of the country, and whether Macario Olvera, who was gefe politico in the same district in 1868, was of the same way of thinking?
>
> "Ans. He answers this question in the affirmative, so far as relates to Marcos Mora, as he *knows* that he was very badly disposed towards the Company in question; that he even went so far *as to say to the deponent that it was necessary to break these companies up and drive them away from there.*" (*Record*, 78.)

The following is from *Soto's* examination by the Mexican government (*Record*, 129):

> "Question. When you were judge at Tayoltita in 1867, did you direct and issue the communications dated respectively the 5th and 4th of July (June), copies of which have been shown to you and which appear on page 6 of these proceedings, he *replied* that he is certain of having issued such communications to the administrator of the 'Abra' establishment, and that he did so because there had been *a rising of the people to compel him to.*"

Not complaints, be it noticed, of the comparatively few miners who were working in the Company's mines, but "*a rising of the people*"—the unemployed population of which Exall spoke.

This important fact was brought out again by Judge Soto as follows (*Record*, 129):

> "On this deposition being read to him he added that the communications which he issued were in consequence of the fact that besides the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora; all in consequence of the failure of the superintendent *to contract with the operatives for working the mines.*"

Shortly after these orders of June 3, 4, and 5 were issued, Exall wrote two letters to Garth on June 11 at Mazatlan, one a short note by a friend who was *en route* for New York, and the other "more fully by steamer." (*Record*, 267.) In his letter of July 20 to Exall, Garth acknowledged receipt of Exall's letter "of the 11th by private hand" (*Record*, 285; *ib.*, 321), and on the 10th of August (*ib.*, 286), said that he had written briefly on the 20th ulto., and *since* had received Exall's favor of the 11th of June from Mazatlan. If that letter, which undoubtedly gave an account of Mora's and Soto's orders of the week previous, was copied, as usual, on separate sheets at the port, and if the copy was pasted into the press-copy book *it has been abstracted;* and if no copy was inserted, then we have another remarkable proof of the material defects of the press-copy book as a record. But it is too much to believe in so many coincidences—the repeated disappearances of letters favorable to the Company's case from the book that was in Granger's possession after he made his contract with Gaona.

Nor can it be regarded as another mere coincidence that in Garth's reply to that missing letter (*Record*, 286), he speaks of reports in the newspapers that—

> "Americans and all foreigners will not be protected in their *persons* and *rights* in that country,

> and that *we may have to abandon our property there.* If so, you must take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government."

Exall did more than protest. He did what the Department of State would have instructed him to do. He appealed, and so did Mr. Rice, acting for the Company, to the higher authorities against those illegal and tyrannical interferences, as found by the Umpire, and as will be shown from the evidence in another part of this brief.

But the most remarkable statement in this letter of Mr. Garth's is the following:

> "The directors of the Company are trying to reorganize and to raise money to pay off the debts, and to prosecute the work anew if possible, but, I am constrained to say, with but little hope of success."

Mr. Garth was not the man to obtain money on false pretenses, nor to conceal material facts from anybody he might ask to join him in a venture. The fact that the property rights of foreigners could be so arbitrarily invaded by officers of the law as were the Company's property rights by Moro's and Soto's orders was a deathblow to the idea of raising further capital. Nothing is so sensitive as capital—not even human vanity. In that remarkable letter of Mr. Foster's in regard to the condidition of Mexico, already cited in this argument, he says:

> "Murder and personal outrage are bad enough, but while it may appear strange, it is nevertheless true that *capital and property are more sensitive to protection than life itself.* A man will often risk his person where he will not take his money or effects." (For. Rels., 1878, p. 650.)

Who would send more money to a place where the

local magistrate could issue an order, on written instructions from his superior, that—

> "If the work of the Abra Company is not to be continued according to the system of one-third as heretofore, *you are to vacate the mines at once*, so that the miners may continue to work *for their own account and may lose no more time?*"

In Soto's second order it was left for the miners to determine whether the Company should be ejected from its mines and all its costly improvements rendered useless or not.

> "Wherefore, this court notifies you that you are to make a suitable arrangement with the miners, as regards their work, within two hours, and IF THEY DO NOT AGREE THERETO, *you are to vacate the mines in order* that THE AFORESAID MINERS *may lose no more time.*"

It was the provision for the "denouncement" of mines in the law as it then stood (a provision now abolished) that induced these combinations between corrupt officials and ignorant and prejudiced laborers to drive the foreign mine owners out.

La Abra Company had a right to stay and protect its property and await developments, no matter how few men it employed or how little money it spent, so long as it did not violate the law, and if it violated the law, there were legal means of redress that could be employed against it.

The Durango Company at San Dimas was protected because Mexican officials were pecuniarily interested in its success. Its superintendent, Mr. Ralph Martin, who succeeded Mr. Rice in 1868, testified to that fact as follows (*Record*, 164):

> "There was, in reality, no protection given to foreigners in that country, and I never knew any

effort to be made by the authorities there to extend protection to Americans, *excepting only in cases where the profits of the mining enterprise were shared by said authorities.*"

See, also, Mr. Birmingham's testimony (*Record*, 738, 739).

The success that might have been achieved by La Abra Company if it had been protected and had carried out its idea of tunnelling its mines, is indicated in the following stipulation between counsel for the parties in this suit: *

"It is hereby stipulated and agreed between counsel for the parties in this cause that if Mark Birmingham, who has been examined in behalf of the respondent Company, were recalled, he would testify substantially as follows:

"That he answered, or intended to answer, the eighth interrogatory propounded to him on his former examination in the affirmative, and now answers it affirmatively.

"That the Candelaria mines at San Dimas were operated from 1863 to 1887, by the various companies which owned them, at a loss; that during these years the work of tunnelling the mines was in progress with various intermissions; that the ore beds below the old workings were finally reached in 1887 or 1888; that when these bodies of new ore were in sight, and while the mines were being worked on a large scale, they were denounced by the superintendent for himself, as abandoned, and the denouncement was allowed by the proper legal authority at San Dimas; that this officer was removed by the federal authorities of Mexico for fraud and collusion in that transaction; that a suit for the possession of said mines is now pending against the said denouncer at San Dimas, in which suit the said

* By inadvertence this stipulation was not included in the *Record*, but it is printed here by consent.

Birmingham's Company is plaintiff; that the mines are now worked night and day by electricity, and are producing, and for some years have produced, from $100,000 to $200,000 net profit per month.

"WM. A. MAURY,
"*Special Asst. to Atty. Genl.*
"WASHINGTON, D. C.,
"*May 7, 1896.*"

As late as October, 1867 (before the Guadalupe hacienda was seized by Soto or Exall was imprisoned) Sloan was at Tayoltita "awaiting news from the Company, expecting that they *might decide to run the tunnel.*" (*Record*, 274.)

The next specification in this paragraph of the bill is:

(9) "That the superintendent was *not imprisoned*, but was only told to consider himself in arrest (at his own hacienda) for alleged contemptuous treatment of a judge, and that he straightway complained to the Prefect, *after which no further restraint was imposed upon him.*" (*Record*, 16.)

In his opinion on the Company's claim, the Mexican Commissioner, Zamacona, made the following admission (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 40):

"It is proved by the statement of *four unimpeachable witnesses* that the imprisonment in question, which only lasted *four days*, was imposed by Judge Nicanor Perez for an offense committed against his authority."

One of the local magistrates, Nicanor Perez, went to the Company's hacienda on January 7, 1868, and, without permission, entered the Company's private storeroom to speak to one of the Company's employés, whereupon Mr. Exall, who was behind the counter in the Company's store, requested him to come out of the private storeroom, as "no one was ever allowed in there without permission."

Perez felt insulted, and on returning to his house sent

an order for Exall to appear before him. What followed on Exall's appearance is detailed in his letter of January 7, 1868, to the prefect at San Dimas. (*Record*, 280.)

The Government's persistence in the assumption that this letter could possibly tell what happened to him on January 8 is most surprising. His appeal to the prefect did not and could not possibly deal with events that had not yet occurred.

His imprisonment in the pest house at Raventon was not imposed and did not commence until the next day, doubtless because Perez had meanwhile communicated with the prefect (Olvera), and had received an intimation that he could wreak his vengeance on Exall for the fancied insult at the hacienda.* In his appeal to the prefect Exall said (*Record*, 281):

> "*Dn. Nicanor intends writing to San Dimas, and will of course give his version of the affair.*"

The abuse and public humiliation to which Exall had already been subjected appear in the earlier part of this appeal of his to the prefect. Judge Perez "*had collected round his house*" (this, be it remembered, is part of "the newly-discovered evidence," *the "tell-tale letter-book"*) "*a number of men, and in the house preparations had been made as if resistance was expected and force might be required.*" At Exall's request Mr. Sloan, one of the Company's employees, who understood Spanish, acted as interpreter, and explained that in requesting him to come out of the storeroom Exall "had no intention of insulting him or *hurting his feelings*, but was simply *enforcing the rules of the hacienda in not permitting any one to go in the storeroom without permission.*"

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*Olvera's predecessor, *Mora*, testified that "the judge, Nicanor Perez, told him at the time that he had imprisoned Superintendent Charles Exall because he had personally insulted him, and that in revenge he had fined and imprisoned him." (*Record*, 87.)

"This he would not listen to, and persisted in saying that I intended to insult him. I, of course, did not, and, from my ignorance of the language, *could* not argue the point. After some time spent in talking to this effect, I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good-bye. As we reached the corridor he said *he never wanted to see me in his house* except on official business. To this I replied, 'Very well, sir,' and turned to leave. He called me back, saying *not to go;* if I did, *he would send a force after me and they would shoot, and insisted on my return into the house. I did so without any remark. He then said I was his prisoner.* I then requested him to know what was to be done. *He said he would put me in jail until he could receive instructions from San Dimas.* I remained passive, and *he then gave full license to his tongue, abusing me in the most violent language.* Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of *putting me in jail until he could hear from San Dimas,* and would listen to nothing that I might say. After being his prisoner for an hour, not being allowed to speak to any one and *being guarded,* I asked if he intended putting me in jail please to do so, as I had a headache and wished to lie down. He then gave me permission to go to the hacienda, but to consider myself still his prisoner and (to be) at his house *whenever ordered.* * * * *But for being a prisoner, I would come and see you in reference to the matter, but unfortunately necessity compels me to write.*" (*Record,* 280, 281.)

This shows conclusively that *the incident was not closed,* and that there would be a sequel. And it was his fear of what the sequel would be that made Exall appeal to the Prefect to "*please act on this immediately.*"

He was writing to the same hostile official, the Prefect

Olvera, who, to give Judge Soto more time when he seized the Company's Guadalupe hacienda a month or two before, had sent the papers to Durango, instead of ordering the Judge to restore possession immediately to the owners. Again Olvera refused to intervene, and next day Judge Perez used his chance, by an abuse of judicial power, to "get even" with the Company's superintendent for a fancied insult and show the miners how a Mexican judge could treat a citizen of the United States.

In Granger's second examination by the Mexican Government (October 6, 1871), when his Mexican friend and partner, Francisco Torres, was working La Luz and Rosario, and was in possession of the Company's hacienda, he still insisted that Exall had been *imprisoned* and *fined*, although in other important respects he modified or contradicted the deposition he had made on behalf of the Company on May 14th in the previous year. His testimony on this point, *as a witness for Mexico*, was as follows (*Record*, 119):

> "That he knows the superintendent to have been *imprisoned* and FINED, *without informing him of the crime for which he was held, and without giving him a trial;* that he (the superintendent) did not wish people to enter the warehouses (bodegas) of the Company without permission from him, was the *cause* of the imprisonment of the superintendent, *the judge having entered them before,* and afterwards the said judge ordered the superintendent to be called, when *he imprisoned him in a small house at a place called the 'Raventon,'* situated in the same district of Tayoltita.
>
> "That, in answer to the question whether he knows that the superintendent asked protection or not from the civil and military authorities of Durango and Sinaloa, and that these denied it to him, he said *that he is aware that he presented himself before the civil authorities of Durango,* but does not know what answer he might have received."

This place, "Raventon," is referred to in Col. De Lagnel's testimony, and appears to have been some considerable distance from the Company's hacienda, although in the same district of Tayoltita. (*Record*, 609, top of page.)

Sloane, who was with Exall when he was haled before Judge Perez, was examined as a witness for *the Mexican government* at San Dimas, October 9, 1871, before Judge Quiros, in regard to Exall's imprisonment, and testified (*Record*, 120):

> "That he *knew* he had been *a prisoner in the jail*, and that * * * from what he saw of the affair it was because the judge went into the hacienda to speak to one of the peons who was at work there, and the superintendent thereupon put him out, from which it resulted that the said judge immediately went to his house and ordered the superintendent to be called before him, when he sent him to *prison*."

The "prison" was "an old uninhabited house that was said to have been occupied by diseased persons;" it was infested with "millions of fleas," "had a most disgusting smell," and was "filthy beyond description." Cryder, an eye-witness, from whose testimony this description is taken, added (*Record*, 69):

> "It was said by the people there that this old house had been but recently occupied by persons of *loathsome diseases*, and that *the judge knew this fact when he sent Mr. Exall there*."

In his letter of instructions to Quiros, judge of first instance at San Dimas, who was taking testimony in 1871 and 1872 for the Mexican government, at that place, in opposition to the Company's claim, the Federal district

attorney, Hernandez, said, under date of May 16, 1872 (*Record*, 122):

> "In the identical inquiry instituted before you, Granger and A. Sloane stated that the superintendent of the Company had been imprisoned by the judge of Tayoltita, and it will be necessary for you to extend the investigation in order to ascertain the *name* of that superintendent; how *long* he remained a prisoner; *who* was the magistrate that caused the arrest, and *what was the result of the appeals which the complainant may have addressed to the superior authorities of the State.*"

Why did they not examine the Governor? Hernandez sent fresh instructions later (July 8, 1872), the eighth point of which he stated as follows (*Record*, 124):

> "It is alleged that Mr. Exall, superintendent of this Company, was imprisoned at the mines; you will be pleased to find out if, in that tribunal, or the bureau of the supreme civil authority, *there is any notice or record of such arrest, and of the reasons which caused it.*"

Under these instructions one Refugio Fonseca, who is described in the translation of the report of his examination (*Record*, 128) as "the person who was in the service of the Abra Company of Tayoltita, and that, therefore, he must be able to give a circumstantial account of what took place on the occasion of the arrest of the superintendent of that establishment," was examined as follows (*ib.*, 128):

> "Do you know what was the name of the superintendent of the Abra; if he was arrested by the magistrate, judge of Tayoltita; how long he was imprisoned; what magistrate ordered the arrest; and what was the result of the superintendent's application to the superior authorities?
>
> "He replied that as a servant of the aforesaid Company he knew the superintendent about whom he is questioned, whose name was Carlos H. Exall;

that he was arrested by Judge Nicanor Perez in consequence of some misdemeanors that the former had committed because he went to his house (he does not know on what business); that he *was imprisoned for three days*, and that he does not know whether said Carlos had made any application to the authorities of the State."

It is to be remembered that this testimony was taken more than four years after the event, and it is evident that the translations from the Spanish are not always as clear as they might be.

Granger was again examined (July 23, 1872) under these instructions of Hernandez, and testified as follows (*Record*, 128, 129):

"That *he was a witness to the arrest*, and that his name was Charles H. Exall; that he was imprisoned for *two or three days* because he reproved Judge Nicanor Perez for having removed from one room to another in the establishment of the Company, and he *knew* that the superintendent *had complained to the Governor of Durango*, but that he does not know with what result."

The following is the response to Señor Hernandez's requisition for any record of Exall's imprisonment existing in the office of the Prefect at San Dimas (*Record*, 136):

"SAN DIMAS, *August 6, 1872.*

"This office having been fully informed of the contents of the foregoing note, I have to inform you in reply that, touching the point alluded to in your note, there does not exist in this office any data, nor any knowledge that the person alluded to has been imprisoned in this mineral district.

"Independence and Liberty.

(Signed) ARCADIO LAVEAGA,
(Gefe Politica).

"SAN DIMAS, *August 6, 1872.*"

It may be that Olvera did not file Exall's appeal or *Perez's order* which Exall had inclosed; and also that *Perez had made no return of the fine of $50 which Granger paid to him for Exall's release.* This payment of $50 was entered as a "*prestamo*" on the Company's books under date of January 8, 1868, in connection with an entry of $3.50 for "*court expenses*" on the 14th of the same month. (*Record*, 743, "Expense account.") This entry is in Exhibit 30, one of the 28 books and papers which were kept in the Company's office at Tayoltita, and abandoned there by Exall in 1868, and delivered by Granger, under his contract with Gaona, to the Mexican Government in January, 1878.

The existence of these entries, made at the time, *ante litem*, confirms the testimony of Exall, Granger, and Cryder in regard to the payment of the *fine*, and affords a partial explanation of the extraordinary fact that while appealing in the name of "honor and justice" to the United States for the return of the undistributed portion of this award, and being, therefore, bound to conduct herself with the most scrupulous propriety and the utmost candor, *Mexico withheld these books and papers from our Government for sixteen years.* During this whole period she fostered the idea that the so-called "newly-discovered evidence" submitted by her in 1878, in aid of her appeal to equity and comity between nations, *contained all the records that had been obtained from the Company's former employé, and was not a mere selection of evidence by the party pecuniarily concerned.*

One of Mexico's witnesses who was examined at San Dimas on October 12, 1872 (Miguel Laveaga), remarked:

> * * * "That *D. Nicanor Perez is here, who is another that ought to know something also, on account of his having lived at Tayoltita at the time.* (*Record*, 143.)

But, although the Federal attorney had been so urgent for proof as to the details of Exall's imprisonment, the Judge who was in charge of the examination (Quiros), and who, according to Dahlgren's deposition, had accepted money and "rations" from Dahlgren in connection with the removal of a part of the Company's machinery (*Record*, 97), *refrained from putting Perez on the stand!* But probably Quiros did not take this responsibility without consulting Hernandez, for they knew that Granger, who was still in the neighborhood, had testified several times as to the facts of the imprisonment and the payment of the fine of $50 imposed by Perez upon Exall, and that Exall had appealed for redress to the Governor of Durango. The Mexican authorities could not examine Perez without proving the Company's case, for, notwithstanding Exall's complaint to the Governor of Durango, *Perez had never been punished or called to account*, either for the prostitution of his functions as Judge to the gratification of personal malice and revenge, or for the disposition of the fine he had extorted from his victim.

Where rights of property and of person could be invaded by their lawful guardians as the Company's rights of property were invaded by Mora and Soto, and as the superintendent's personal liberty was invaded, his life endangered, and his personal and official standing in that half-civilized community ruined by Judge Perez, what was there to do but abandon the enterprise?

The next specification in the XVIth paragraph of the bill (*Record*, 16)—

> (10) "That no redress was denied the officers of the Company, and no wrongs were inflicted upon them"—

is fundamental, and if it were established, as promised, by "the newly-discovered evidence," or by the witnesses

designated in the bill, or if it could be shown from the whole case that such was in very truth the fact, and that *the evidence which led the U. S. Commissioner and the Umpire to a contrary conclusion* was obtained " by fraud effectuated by means of false swearing, or other false and fraudulent practices *on the part of the said La Abra Mining Company, its agents or assigns*," the Government would be entitled under the Act (if it be constitutional) to a decree forever barring the Company from any claim to the undistributed portion of the award.

The Umpire found that the protection of the law had been denied to the Company, and that the officers of the law at San Dimas and Tayoltita were themselves the wrongdoers—

> " That *the local authorities at San Dimas*, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only *showed themselves a spirit of bitter hostility to the Company*, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers.
>
> "*The conduct of these authorities was such* and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the Umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for *this reason*, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise.
>
> " These facts are not, in the Umpire's opinion, at all refuted or even weakened by the evidence submitted by the defense; on the contrary, he believes that *the local authorities were determined to drive the claimants out of the country.*" (*Record*, 8.)

But for the Umpire to find as matter of law that the Mexican government was responsible to the United

States, under the Convention, for the action of the local authorities, it was necessary that he should be convinced that the claimants had appealed to the superior authorities for protection and redress, and that their appeal had been denied. On this matter of fact the Umpire found:

> "It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. To suppose that when so determined a spirit of hostility on the part of the local authorities (one of whom was the gefe politico, who wielded great power), and so much indifference by the State government were displayed toward the claimant it would have been of any avail to appeal to the courts of justice, would be puerile.
>
> "In short, the Umpire does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise." (*Record*, 8, 9.)

Now, in face of these findings, the Attorney General says in the XVIth paragraph of the bill (*Record*, 16):

> "That the said documentary evidence (*i. e.*, the press-copy book and Garth's and Exall's letters) and the said witnesses (Dahlgren, Gamboa, Loaiza, Sundell, Elder, Hermosillo, Somero, and Torres) will enable your orator conclusively to show the facts in the XVth paragraph of this bill alleged, and *also the following*, which your orator says are the facts, to wit: * * * (and here comes the allegation with which we are now dealing)—
>
> "*That no redress was denied the officers of the Company, and no wrongs were inflicted upon them.*"

The Government had thus bound itself to show to the court, from the sources indicated in the bill some proof of the truth of this fundamental allegation.

But, as we have seen, the Government called only two

of these witnesses in this suit, and did not examine either of them on this subject, while the letter-book which it produced shows that Exall appealed to the Prefect at San Dimas for protection against the aggressions of the two local magistrates, Soto and Perez. (*Record*, 278–281.) And Garth's letter of August 10, 1867 (another part of "the newly-discovered evidence") shows that he had instructed Exall to consult with Mr. Rice for the purpose of taking any necessary steps for protection or redress on behalf of the Company. (*Record*, 286.)

Thus the Government declined the attempt to prove this allegation by the documentary evidence or the witnesses designated in the bill, and it proceeded to attack certain portions of the original testimony on which the conclusions of the Umpire were founded. And thus it was made clear to a demonstration that this proceeding was nothing (so far as the complainant is concerned) but an attempt to retry an international claim in a municipal forum on the evidence, and only on the evidence, on which it was tried and determined more than twenty years ago by a court of exclusive and final jurisdiction under the law of nations. But the appellants are ready to consider the case on the evidence that was submitted to the Commission as well as on the evidence taken in this suit.

Chavarria's Testimony.

Let us look at the situation when Chavarria was examined in support of the Company's claim. As to the character of this witness and his testimony on another point, see *supra*, 188 *et seq.*

Tayoltita, where the Company's mines, works, and hacienda were situated, is in the State of Durango, distant from the capital city of Durango about 150 miles. It

was in this capital city, upon petition of the Company's agent, A. W. Adams, dated July 11, 1872, and addressed "to the First Criminal Judge acting in civil proceedings," that Chavarria was examined. His examination was made in the court of which Señor Pedro J. Barraza was judge. Señor Barraza was a distinguished Mexican, as well as a distinguished judge, having with General Vega acted as agent for the Mexican (Liberal) government in this country in the purchase of arms and the promotion of other measures for the Republican cause during the French invasion. (*Record*, 740.) It was by this judge that Mr. Chavarria was cited to appear on the day following the presentation of General Adams' petition, July 12, 1872. (*Record*, 80.)

Chavarria's examination, on the Company's side, followed as it was in a few days by that of the former Prefect, Mora, who was brought into the same court by compulsory process, must have excited a great deal of attention.

Now, upon "the great fundamental question in the case," what did this distinguished witness say? He testified as follows:

> "15th. State whether the protection of the National and State authorities was duly and legally invoked on behalf of the Abra Silver Mining Company, at the end of 1867, to protect it against the unlawful attempts made against it and the robbery of its property by Mexicans at the instigation of the gefe politico of the district and the local authorities at Tayoltita? If this be so, then state how you learned the facts? Who was employed by the Company as its agent, to represent the facts to the authorities? Who was employed and acted as the Company's attorney at the time the said protection was invoked? State what was told him, and what was done in his presence by the National and State authorities when the said protection was asked for, and in reply to his petition?

"Ans. That the matter stated in this question is true in all its parts; that *deponent, employed by Mr. Rice, of California, as Exall's lawyer, repeatedly solicited,* from the *State* government, protection for the Abra Company, to suppress the robberies and outrages which the Company were experiencing at Tayoltita, but all to no purpose, as, after innumerable steps and measures, *the Executive of the State never even so much as requested the authorities at San Dimas to comply with their duties.* The only answer given was, that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters.

"16th. State whether it is publicly well known to the authorities and the people of this city and other parts of the State that the Abra Silver Mining Company was compelled to abandon their mines and mining operations at Tayoltita in the month of March, 1868, by reason of the acts of the national and local authorities of Mexico? State, also, *if the Executive of the State had the power to prevent such acts, and whether he refused to exert such power for the purpose?*

"Ans. That the matter contained in the question is true, and which he knows, because it was publicly well known that the Abra Company abandoned their mines at Tayoltita in March of 1868; that he also knows that *the Executive of the State had the military and civil power requisite to have prevented and protected that Company from being violently expelled; the deponent is unable to explain the reasons why this protection was withheld.*

"17th. State whether you know, or ever heard it said, that the Company, or any of its American employees were, ever guilty of any illegal acts, or of disobedience to the laws, during the time that they were working the said mines, or during their residence in Mexico? State whether you know of any valid reason, or excuse, why the due and lawful protection was denied by the Mexican authorities, such protection, you say, having been duly invoked by the Company?

"Ans. That he knows of no unlawful act having been committed by or (justly) imputed to the Company, or any of its American employees, during the time of their residence in Mexico; on the contrary, he knows that their conduct, both in private and in public, was good, and consequently he does not know by what lawful reason the Mexican authorities withheld from them the protection to which they were entitled." (*Record*, 82, 83.)

In his letter of August 10, 1867, included in the "newly-discovered" evidence, Mr. Garth had instructed Mr. Exall to take all necessary and legal measures by protest and otherwise for the protection of the Company's rights, and had added: "Mr. Rice no doubt will be of essential service to you in any measure of this sort, and we would advise you to consult freely with him." (*Record*, 286.)

This corroborates Chavarria's statement, *supra*, that he was employed by Mr. Rice as Exall's lawyer. In the first part of his testimony, from which we have already quoted (*supra*, 190 *et seq.*), Señor Chavarria described what he himself had seen and heard at Tayoltita when he was there with the Prefect in July or August, 1867—words and deeds of that official that would seem incredible were it not for the revelations made by the diplomatic and consular correspondence published in our "Foreign Relations" in regard to the official corruption and hatred of foreigners prevalent in Mexico prior and subsequent to that time.

When Chavarria testified in court at Durango, Mora and Soto's written orders were on file in the claimant's case, and copies had been sent, with instructions to examine Mora, to the court of first instance at San Dimas, by the Federal District Attorney, Señor Hernandez, who was himself at Durango.

Now, why did not the Mexican authorities examine Chavarria as soon after he testified for the Company as possible? They did not file their evidence with the Commission at Washington until October, 1873—*more than a year after Chavarria's examination at Durango*, and they continued taking testimony at San Dimas until October, 1872.

If Chavarria perjured himself and if he was suborned by the Company (for these two things must be proved) why was he not arrested and tried at the time? Or, if not then, or some time during the four years that intervened before the motion for a rehearing was denied by the Umpire, why was he not arrested and tried as soon as the scathing words in which the Umpire denied the motion were known in Mexico? (See the Umpire's remarks, *supra*, 128.)

The most damaging testimony in the case against Mexico was given by two distinguished Mexicans, C. F. Galan * (*Record*, 187) and Jesus Chavarria (*ib.*, 80–84.) The United States should never have listened to Mexico's protests against the award in this case, grounded as those protests were upon the alleged perjury of the witnesses for the Company, till these distinguished Mexican citizens (whose testimony, if not disproved, justified the award) had been fairly tried and convicted of perjury.

There was no bar, as we have seen, to the trial of Chavarria or Galan for perjury. (*Supra*, 208; *Record*, 595, 596.)

The reason why Chavarria was not examined by the Mexican authorities, as Del Valle, Granger, and Avalos were after they had testified for the Company, was doubtless twofold—because, in the first place, it was to be

* As to Galan's prominence, see *supra*, 187.

feared that he would have given further particulars and strengthened the case against Mexico, and because, in the second place, there was already in the case evidence of the fact that Exall, in his own proper person, as well as through Rice and Chavarria, had appealed to the State authorities for protection and redress.

Chavarria Corroborated by Granger and Mora.

This fact was *twice* brought out by the Mexican government (*i. e.*, in its second and third examinations of Granger in connection with Exall's imprisonment in the pest house).

Granger said (*Record*, 119):

> "He *knew* that the superintendent *had complained to the Governor of Durango*, but that he does not know with what result."

And he repeated the statement in his re-examination before Judge Quiros. (*Ib.*, 129.)

But Chavarria's testimony had also been corroborated in many important particulars by the Prefect, Mora, himself—a witness who, like Perez, knew so well why it was that the Company could not continue its work or retain its property at Tayoltita, that the Mexican authorities were afraid to examine him.

On the 8th of July, 1872, the Federal District Attorney, Hernandez, wrote to the judge of first instance at San Dimas, before whom the examination of witnesses on behalf of the Mexican Government, in opposition to La Abra Company's claim, had been proceeding for over a year, and stated to him (*Record*, 123):

> "It is of *great importance* that C. Marcos Mora, who was the judicial authority of that district, and

Guadalupe Soto, who was judge at Tayoltita, *be examined*," &c., &c.

On the 15th of July, 1872, the San Dimas judge (Quiros) certified that "as to *Mora* and Avalos, their place of residence is not known."

Quiros, who had refrained from examining Perez, also refrained from examining Mora, or making diligent inquiries as to his whereabouts.

Mora had settled at Durango, and, upon General Adams' petition, was examined on behalf of the Company (in the manner permitted for the examination of a hostile witness) within eight days from the time when Quiros certified that his place of residence was not known. Hernandez should have known (and perhaps he did know) that Mora was in Durango. But it may have been supposed that the judge's certificate that his residence was not known would be an adequate excuse for letting him go—as Perez went—unexamined. Before quoting what Mora said on the fundamental part of the case now under consideration, it may be well to quote what he said about Quiros, inasmuch as it may explain why that official showed so little interest in having him examined. After testifying that his predecessor as Prefect at San Dimas in 1867 was Ignacio Quiros, and that this Quiros was then (July 23, 1872) "judge of first instance in that department, and that *the general and common feeling in that town was adverse to the Americans*," he said (*Record*, 87):

> "That although he did not know the persons referred to in the question (Quiros and Laveaga) previous to becoming gefe politico, he afterward became perfectly acquainted with them, and *knows that they were unfriendly to the Company, 'La Abra,'* and toward the other Americans residing in the department; *that neither of them were satisfied with the*

laws given by President Juarez inviting foreigners to come to the country, and although those persons might have obeyed them, it was against their own wishes; that they not only showed their unwillingness to do so, *but in various ways tried to molest them and force them to leave the place.*"

Mora also testified (*Record*, 88)—

"That he did hear it stated that during Olvera's time that the Mexican operatives, who were absolutely without work to maintain themselves, stole some of the Company's ores, and that *neither Quiros nor Olvera* would listen to any complaints made on account of the said robberies by the Company's superintendent."

It will be recollected that the Mexican government and Mr. Attorney General have shown by the testimony of Colonel De Lagnel that hostility to the United States was not a sentiment of which the Mexicans who entertained it were ashamed. The words of De Lagnel's young friend and employee were significant (*supra*):

"*We hate them.* * * * *It was taught us by our fathers.* They have *told us all*, and they KEEP AT IT."

The following is from Mora's examination, in his answer to the thirtieth question (*Record*, 89):

"That Lawyer Chavarria informed him that the Abra Mining Company, at the time referred to in the question, employed him and Mr. Rice, the former as lawyer and the latter as attorney in fact of the Company, *to make a complaint to the governor, General Francisco Ortez de Zarate, of the damages and persecution which the Company were experiencing at San Dimas, and asking him for protection;* that, at the time, *the governor sent for deponent*, and questioned him with regard to the Company; that the deponent informed him that it consisted of *Americans*,

and, like all other foreigners, *was working for the ruin of Mexico;* HE REFUSED IT THE PROTECTION WHICH IT PRAYED FOR."

It has already appeared that the second part of this specification—that "no wrongs were inflicted upon them" (the officers of the Company)—is in no way supported by the newly-discovered evidence or by the witnesses designated in the bill; but, on the contrary, that the Government has proved by De Lagnel the levying of illegal exactions upon the Company's trains and their detention, to the great loss and damage of the Company, and also the hostility of the local magistrate, Soto, and of the people in general to the Company, its officers and operations.

Proofs of the Company's Injuries.

In the course of this discussion of the facts, one subject has run into another, and although the burden of proving the Company's alleged fraud in obtaining the award is on the Government, the affirmative side of the Company's case has unavoidably been developed, and we have seen, as we have gone along, the honesty and strength of the original claim—the proofs of the seizures and detentions of the Company's trains, the loss and embarrassment arising from this cause, and the "tribute" or "prestamos" exacted for their release; the robbery of Scotty; the murder of Grove; the disappearance and supposed murder of another train captain; the hostility of the local magistrates; their orders of dispossession issued in June and July, 1867; their attempts to make the superintendent employ the unemployed population; the seizure of the lower hacienda by Soto, pending his fraudulent attempt at "denouncement;" the collusion of Perez and Olvera in this unlawful disseizin; the fruit-

less appeals to the State authorities for protection and redress; the illegal and arbitrary arrest of the superintendent; his imprisonment in the pest house; the exaction of a fine for his release; and the failure to punish the judicial wrongdoer, or even to call him to account, although he had appropriated the fine to his own use. This exemption from punishment or restraint encouraged the local authorities in their wickedness, and made them feel that they had the sympathy of their official superiors and the power of the State behind them. So we find, from Granger's deposition, that within a month after Exall was released from the pest house, Perez again abused and humiliated him before the mining population (*Record*, 48):

> "A few weeks after this occurrence, on a Saturday, the superintendent (Exall) received from the said Judge Perez an order directing him to attend at his juez-gado (court room), and the same evening, at seven o'clock, Mr. Exall, in obedience to said order, went to the court room, *where he found assembled a large number of the employees of La Abra Company's mines and others*, and, in *their presence*, the said judge proceeded to lecture said Exall upon the manner in which the business of said Company should be carried on, and he threatened that if the superintendent or Company did not work in the mode and manner to please the authorities they should be *deprived of their property and forced to flee the country; all of which was said in my hearing*, and although I have only stated a few circumstances that came under my direct observation, showing the animus of the authorities and people of this district, these are not by any means to be taken as all that took place. It was the daily and almost hourly annoyances and interruptions. Every pretext that could by any means be made the basis of a suit or exaction was availed of."

Threats against the Company seem to have been made as openly by the authorities at San Dimas as at Tayoltita. Alfred A. Green,* who was interested in the San Luis mine, and lived in the San Dimas district, near Tayoltita, from the beginning to the end of the year 1868, testified as to these threats as follows (*Record*, 35):

"In January, 1868, at San Dimas, I heard some Mexican citizens, in the presence of the 'juez' (Quiros)

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*It may be as well to notice here how Green came to be a witness for the Company. He called on Mr. Garth at his office in New York, late in 1869, and reminded him that he had met him in Mexico in 1865. What followed is thus told by Mr. Garth (*Record*, 709):

"Green stated to me that he knew all the conditions that existed at Tayoltita, for he lived in that neighborhood, and knew all the people and knew all the roads (*sic*), and that he was a miner there, and understood their language, and *knew the facts;* that he knew that Exall had been *interfered with and driven off by their officials, and that his life was in danger by remaining there very long.*

"Q. Do I understand you had no previous communication with Green?—A. None whatever.

"Q. And that it was entirely of his own accord and very unexpectedly to you that he came to your office?—A. I was greatly surprised. * * *

"Q. How came that deposition (Green's) to be taken?—A. *Knowing what Green had said, and believing it to be true, I introduced him to the Company's agent, and he volunteered to give this deposition, which was taken in New York.*

"Q. Who at that time was attending to the matter of evidence in support of the claim?—A. A Mr. Adams.

"Q. Give his full name, if you can.—A. Alonzo Adams, I think.

"Q. Was he the man known in the case as General Adams?—A. Yes, sir. I think his name is Alonzo, although I am not certain about that; but he was known as General Adams.

"Q. Did I understand you to say that you introduced Mr. Green to General Adams?—A. I did. General Adams came in probably while I was talking to Mr. Green, and I introduced him to Mr. Green. They were together for hours.

"Q. Do you know whether Mr. Green had ever seen Adams before that time?—A. I know he had not; at least Adams said he had not, and Green said he had not. I know they had never met.

"Q. *Your introduction was their first acquaintance?*—A. *So I believe.*

declare that *they would kill or drive away all the men of that Company*, and the threat was *applauded by the 'juez.'* * * * In my hearing, some Mexican authorities said they intended to *drive out all the American mining Companies, as they had done with the 'Candelero Company,' and get their mines and property;* they were local authorities at San Dimas; amongst the number, I heard the acting Prefect (Olvera) and judge of the first instance (Quiros) say so.

* * * * * *

"After the expulsion of La Abra Company which I have mentioned, in March, 1868, Mexicans were engaged in carrying off its ores, and *it would have been impossible for the Company to have returned and continued its mining operations. Any persistent attempt to do so, I am sure, would have only resulted in the killing of the superintendent and his officers.*" (*Record*, 36.)

John Cole, an unimpeached and unimpeachable witness, after testifying that he had frequently seen the Mexicans packing off "said ores from the works of said Company in sacks upon mule backs, in March, April, and May, 1868," testified that—

"The Prefect of San Dimas, Macario Olvera, *told deponent* that the said Company were *compelled* to leave there in the spring of 1865, and that *if they came back* he, the said Prefect, *would have them driven off again.*" (*Record*, 57.)

John P. Cryder (a witness who has seriously hurt himself in the estimation of the Government's counsel by telling of the millions of fleas and the filth that he saw when he visited Exall in the pest house at Tayoltita) tells also of the continued threats and hostility against Exall, on the part of the local authorities, which might have been curbed if the governor had interfered. After stating that he spoke and understood the Spanish language well, and that he heard Soto say in the winter of 1868 that "he

was in favor of driving said La Abra Company out of Mexico, and all the rest of the Gringo Companies," Cryder testified as follows:

> "I heard said local judge, Nicanor Perez, say he would 'run that La Abra Silver Mining Company out of Mexico.' He said that 'the mines of Mexico belonged to the Mexicans,' and that his government had no right to permit the 'Gringos,' as he called Americans, to 'come here and carry off all the best of their metals,' and that 'the people,' he said, 'would take care that the ores of La Abra mine don't go away in the hands of these Gringos,' and he, the judge, Nicanor Perez would see that the people of Mexico shall have the benefit of these locos' ('fools') investments.
>
> "I recollect that his remarks were made in a prejudiced and determined manner, and in the form of a threat that he would encourage any act, if necessary, to carry his point against that Company, and I so understood it and communicated the facts to some of the American employees there. This was in February, 1868. *I afterwards told Mr. Exall of the threats of the juez.*" (*Record*, 69.)

Perez had injured Exall, and hated him. Exall had been in Perez's prison, and feared him.

Cryder testified further:

> "I also heard Macario Olvera, the Prefect or gefe politico of the district of San Dimas at that time, *February or March*, 1868, say that 'La Abra Silver Mining Company could not stay in that district;' that 'it would be impossible for them to do so.' This was at San Dimas; he did not say positively what course he would pursue, but he said *the authorities were determined to get rid of that Company*, and they could not stay there and work those mines; he said it would be better for that Company to give up their mines and leave the country 'before any accident should happen,' for which, he said, 'the Prefect would not be responsible.'

"I asked him what he meant by the use of the word 'accident' in that conversation, and he made an evasive reply, which satisfied me that mischief was meant, either by the Prefect himself, or by the people or local authorities, with the acquiescence of said Prefect. This said Macario Olvera was, at the time this conversation took place, February or March, 1868, the official and acting Prefect of that district. He was called 'Gefe Politico.' The 'Gefe Politico' of the district, in any part of Mexico, is the chief authority, civil, military and political. I know a man must possess great nerve if he dares to oppose the will of the 'Gefe Politico' in any district of this country. The intimations of difficulties or 'accidents' made by said 'Gefe Politico' against La Abra Silver Mining Company were made in the presence of two or three Mexicans, who evinced immediate approval of said remarks, and considerable of feeling. My suspicions were at once aroused that Superintendant Exall might be in great danger, and that other 'accidents' might happen, and *I told Mr. Exall the first time I saw him after this conversation I have related with said Prefect.*" (*Record*, 69, 70.)

Cryder and Green had both become domiciled in Mexico and identified with the country, and they spoke the language fluently. Green had been a field officer in the Mexican army, and subsequently Commissioner of Immigration for the States of Sinaloa and Durango, and, as such, had invited and induced emigration, both agricultural and mining, from this country to Mexico, under official promise of protection. Cryder, at the time he gave his testimony, resided and had a ranch at Limon, in the district of San Ignacio, and State of Sinaloa. They both were within easy reach of the Mexican authorities, and could have been re-examined while the Commission was in session, or tried for perjury subsequently if the Mexican Government had believed that they had perjured themselves as witnesses for the Company.

Green was employed by Slaughter, under his contract of March 29, 1877, with the Mexican Government, and was at Mazatlan on Slaughter's business shortly thereafter, while Gaona and Granger were negotiating for the Company's books and papers, and might at least have been re-examined, if not tried for perjury at that time, if he had not been so confidentially employed on the Mexican side of this case.

Loiaza, one of the Mexican witnesses who testified on behalf of the Company, said (*Record*, 72):

> "I heard Marcus Mora, who was at that time gefe politico of the district of San Dimas, say that he would drive the Abra Silver Mining Company away from the San Dimas mines. This conversation took place at Tayoltita, near the reducing works, and I believe that it was at the end of 1866, or the beginning of 1867. I know that it is a fact, that there was a firm determination existing on the part of all, or nearly all, of the authorities of the district of San Dimas to get rid of the said Company. I know this from my frequent conversations and the expression of the opinion of the people and the authorities, while I was employed by the Company in transporting provisions and other articles for them, as I have stated."
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> * * * * * *
>
> "I knew the late Prefect or gefe politico of the said district. His name was Macario Olvera and he was killed, a few weeks ago, at San Dimas, in a quarrel with his own townspeople. I believe that he was married to one of Judge Soto's family—at least it was so said and believed in the district. He was a great friend of Judge Soto, and I have heard him tell Olvera, the Prefect, that they would never allow the Abra Silver Mining Company to renew their mining operations in the district." (*Record*, 73.)

Now, in view of the evidence cited (and there is much more to the same effect in the record), what doubt can

there be of the substantial truth of Exall's testimony as to the reasons why he abandoned the Company's busines and property at Tayoltita? To quote from his first deposition (*Record*, 31):

> "The civil authorities of the legitimate government of Mexico under President Juarez also harrassed and annoyed us and interfered with the continuing of the mining operations of the said Company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understand, was 'Juez,' and thrust into prison, and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released by the personal influence of a Mr. Granger, who had to promise payment of the said fine; no good reason ever having been given me for my arrest or release. I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts and the acts of violence were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and *the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the Company, and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the Company to save our lives.*"

That Exall kept on to the last trying to continue the operations of the Company, appears from the records that have been so long withheld by the Mexican government. Those records show that he went to Durango, the capital of the State, about the middle of February, 1868, and *paid taxes on the Company's hacienda, mill, and merchandise* (*Record*, 743), and also (entirely contrary to the theory which has been maintained by the Mexican government and its agents in this controversy) *that work was going on in the mines until the abandonment.*

The second paragraph of the stipulation printed in the Company's evidence (*ib.*, 745), reads as follows:

> "That there are entries in the said books in October, November, and December, 1867, and *January and February, 1868*, against La Abra, La Luz, Arrayan, and Sanz mines, for fuse, gunpowder, or other items; also on 'mill account' in October, November, and December, 1867, for wood, salt, quicksilver, etc., there being a debit of $563.09 on that account in December, 1867, for merchandise, in which the wages of workmen in the mill, as well as in the mines, were paid."

The next specification of the XVIth paragraph of the bill is:

(11) That the officers of the Company paraded their rights as American citizens, that Superintendent Bartholow proposed, if certain taxes were imposed upon him, to hoist the American flag, and to have them taken from under it by the military, the result of which threat was, as he explained it to Treasurer Garth in his letter of April 10, 1866, that instead of paying three or four thousand dollars he only paid thirty dollars.

This allegation simply shows that on one occasion (two years before the abandonment) General Bartholow successfully resisted an attempt to collect an illegal tax of

$3,000 upon supplies which had been transported from Mazatlan to Tayoltita, and upon which he had already paid the "import duties" at the port of entry, by serving a notice on the tax collector containing the following statement (*Record*, 215):

> "If such a tax as this is imposed upon me, I desire General Corona to send here an officer empowered with written authority to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, put my goods and property under the protection of the flag of the United States, and from under it I intend they shall be taken."

The goods were then in General Bartholow's possession at Tayoltita. If they had been stopped on the road, as the Company's trains were prior and subsequent to this incident, the result would probably have been different. It appears from the depositions of Cole and Clark, as well as from General Bartholow's deposition, that he encountered many difficulties which he did not describe in detail, although he alluded to them in some of his letters to Garth which are copied in the letter-press book. The first one which is copied in that book is dated February 6, 1866, and it alludes to a letter written by him to Mr. Garth "about the 1st Jany.," giving him a report of "operations up to that date." *This important letter was not copied in the book*, the earliest date in which is January 11, 1866; whereas General Bartholow's work for the Company commenced in the summer or fall of 1865. This is another proof of the incompleteness of the letter-press-copy book as a record.

That General Bartholow had difficulties not described in the press-copy book does not depend on his own deposition. Echeguren, one of the leading merchants in Mazatlan, testified (*Record*, 104):

> "I recollect to have heard from the first super-

intendent, General Thomas J. Bartholow, of the troubles and difficulties he encountered, *soon after they occurred*, on the road from this place to Tayoltita, *in 1865* and 1866, when attending to the transportation of the Company's machinery and supplies, being continually detained on the road by the said military people, and that he had to contend with them, and *to pay large amounts of money*, '*prestamos*', *in order to be allowed to go on.*"

The next specification is—

(12) That when Garth instructed Superintendent Exall, in his letter of July 10, 1867, to be firm in maintaining his rights as an American citizen in any difficulties with the authorities, the latter replied, on the 6th of October, 1867:

> "There are no difficulties about authorities, boundaries, or anything else concerning the mines or hacienda, provided there is money on hand, and money *must* be sent."

This is a quotation from one of those letters of Exall's, in which (as stated in his explanatory affidavit of May 1, 1878, *Record*, 670), he colored the situation to suit his own private purposes. This, and the other letters containing statements of the same kind, will be considered under a separate heading. (*Infra*, 359–365.)

That there were difficulties with the authorities known to Garth is very clear. It is to be noticed that in his letter of October 6, Exall acknowledged receipt of *three* letters from Garth, dated respectively July 10, July 20, and August 10. In this last letter, which was written after Garth had seen Señor Molina, and *had received Exall's report of June 11—the one which does not appear in the copy-book* *—Garth gave the following instructions:

* Garth's letter of September 30, mentioned in his of October 10, 1867, to Exall, *has not been produced*. It was probably written in

> "You must take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government."

This the Company did, acting through Mr. Rice and Señor Chavarria, and this was the one thing necessary to fasten responsibility upon the Mexican government. If the protest or appeal had been made to our government, through our Minister or one of our consuls in Mexico, the Company would have been informed by the Secretary of State, that, having gone voluntarily into Mexico to engage in developing Mexican mines, it must apply to the proper Mexican authorities for protection or redress on account of the acts of the local magistrates, and be able to show a denial of justice before the government of the United States could intervene. Having of its own accord followed this course, all the Company had to do was to wait for a forum in which its claim could be tried, and it happened that our government was negotiating in that direction at the very time that the Company was suffering from persecutions of the local authorities at Tayoltita. But the Court of Claims says (*Record*, 839, 840):

> "The treaty under which the Commission convened, the fact of its meeting on the 31st of July, 1869, were matters of legal and public notoriety which could not have escaped the attention of persons interested in the property rights of the Company, its officers and attorneys; and in view of that, it becomes one of the strange incidents of this controversy that the presentation of the claim, involving more than $3,000,000 *should have depended upon what may be construed a casual meeting between Garth and one of the original attorneys in the City of Washington in the autumn of 1869.*"

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reply to Exall's missing letter of June 11th, which was sent from Mazatlan just after the troubles with the Mexican officials.

This is an entire misapprehension, because it is evident from the following testimony of Garth that General Bartholow, who held stock of the Company to the amount of $16,000, had been looking after his own and the Western stockholders' interests, and preparing to prosecute the Company's claim before the proposed Commission, prior to the "casual meeting" between Garth and Rose:

"Q. How did General Adams happen to be in your office that day when he met Green there?—A. He came there with a letter from General Bartholow of St. Louis. He came there with a letter of introduction from *General Bartholow* a short time before, *in which he said he had employed General Adams to go out there and take testimony,* and General Adams produced the letter. I had never seen or heard of the man before, and *we had to act in conjunction with the Western stockholders, who were more numerous than those from the East, and obtain their co-operation.* It was supposed they would not be capable of raising sufficient funds to employ the lawyer or party whoever went there, to take the testimony and expenses of it.

"Q. *Did Bartholow employ Adams to take the testimony without any communication from you or the Company in New York?*—A. *He did, and to my surprise.* I was very much surprised, because I had intended when I talked to them of sending another party. * * *

"Q. *Then this matter did not originate with you;* it seemed to occur to Bartholow also to prosecute this claim?—A. If I was to go back to the first history of it I could probably be able to state it better. I did not know it was necessary. I never knew of the Commission until the Commission was in existence. *Until General Bartholow called my attention to it, I never knew of the Commission at all.* Did not know there was such a thing in existence.

"Q. How did General Bartholow come to call your attention to it?—A. I don't know. I suppose he had seen it published in the papers.

"Q. How long before your interview with Judge Rose?—A. *That was before my interview with Judge Rose.*

"Q. Before your interview with Judge Rose, Bartholow called your attention to it?—A. Yes, sir.

"Q. By letter or in person?—A. By letter, because he was not in New York." (*Record*, 718, 719.)

Mr. Garth testified that he made the acquaintance of Judge Rose in Washington "early in the fall of 1869." (*Ib.*, 708.) Mr. Garth was a very busy man, and after Exall had returned and the Company had decided that it would not be safe to send any one down to the mines (*ib.*, 713) he had given the matter scarcely any attention; or, as he said, "the cow was dry and I was going to hunt a fresh one." (*Ib.*, 727.) Bartholow or some of the Western stockholders may have known soon after Exall's return that the convention of July 4, 1868, was under negotiation. Exall reached New York early in May, 1868. Bartholow may have been aware of the provisions of the treaty for a Commission, and that here was the only opportunity for an adjudication of the Company's claim, because, of course, the government would not press any particular claim when a general settlement by arbitration was in process of negotiation. And the convention provided for the adjudication of claims *whether they had already been presented to the respective governments or not.* (*Supra*, 4.) It was through Bartholow that Garth was informed of the organization of the Commission, the first meeting of which was held on the 31st of July, 1869. The treaty was proclaimed by the President of the United States on the 1st of February, 1869, within nine months, and it had been concluded on the 4th of July, 1868, within two months of Exall's return.

If Bartholow were living, it might be shown that the reason why the claim was not presented to the Govern-

ment of the United States prior to the time when Mr. Cushing was notified of it as agent of Mexico before the Commission, *in November, 1869*, by the Company's attorneys, Britton & Ely, was that the provisions of the Convention (*supra*, 4) allowing eight months from the first meeting of the Commissioners for the presentation to them of claims, whether previously presented to the Government or not, was known to him. But, be this as it may, the Company had laid the proper foundation for the of its prosecution claim against Mexico by its appeals to the State authorities for protection, under Mr. Garth's written instructions, and it can not be said, with any regard for the truth or the evidence, that its presentation of its claim to the Commission was *an afterthought*.

The next specification of this XVIth paragraph is:

(13) That as early as May, 1867, the said Garth, treasurer of said Company, advised Superintendent Exall, at the mines, that no more money could be sent him by said Company; that a draft on said Company for $5,000, drawn by Superintendent De Lagnel through the Bank of California, had been protested; that the said Exall must pay all expenses from the proceeds of the mines; and in July, 1867, the said Garth wrote the said Exall—

> "If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop, the better for all parties concerned."

This allegation is simply in the line of Mexico's contention in the original trial, that the Company abandoned its mines because they were unprofitable and its funds were exhausted. But that theory leaves unexplained the abandonment of new buildings and modern machinery, supplies, mules, implements, etc., which had cost such a large amount of money. Nor is the Mexican idea that all these belongings were left in Granger's care,

as agent for the Company, compatible with the fact that *Granger never wrote a line to the Company or the Company to Granger after Exall left.* The temporary disappointments or financial difficulties of the Company are not incompatible with the want of security for life or property at Tayoltita. The two things could co-exist, and, as already suggested, even if the financial necessities were as urgent as Exall, in some of his letters, represented, it would not follow from that that he did not finally abandon the property and business of the Company at Tayoltita because he was apprehensive for his safety, and had found it impossible to endure the threats and oppressions of the local authorities and their interference with the Company's business any longer.

Now let us see what Exall reported to the Company on his arrival in New York. Garth states what Exall said, as follows (*Record*, 705, 706):

> "Q. Will you tell us what Exall said to you, in substance, on his return from Tayoltita to New York, as to the reason why he had left?—A. He came into my office unexpectedly to me, and stated that he had been so interfered with by the officers or magistrates that he was unable to conduct business, and that he had himself been imprisoned, and he said to me that he was imprisoned about two weeks, and that he feared for his life; he was afraid of his being assassinated or being killed and he had to leave. That was the substance of his statement to me."

On this point Mr. Ely testified (*ib.*, 655):

> "In May, 1868, Mr. Exall came to my office in the city of New York. After shaking hands with him, I said I was surprised to see him here; that I supposed he was in Mexico making silver bricks for La Abra Company, and he stated that he had been compelled to skip out between two days. I think that is the very expression he used, 'skip out between two

days.' And I remarked I hoped he had not been committing any crime down there and had to leave the country in that way. *He said he got alarmed for his personal safety and was fearful of what might happen to him*, and he went out in that way as the safest way to go. I asked him what was the danger, what was the trouble. Well, his reply was that *the local authorities down there were a very bad lot; that they were arbitrary, and if they got down on a man they would do about what they liked with him, and there was not much, if any, chance for redress.*"

Mr. Garth, on cross-examination concerning Exall's statement, on his return, why he had abandoned the mines, said:

"*He stated to me that he had done everything he could for the protection of the Company and its rights, and that he left because he was afraid of his life, and there was no possible chance to prosecute the business there on account of the interference by the officials.*" (*Record*, 712.)

In further cross-examination Mr. Garth was asked why somebody was not sent down to care for the property after Exall's return, and he replied:

"I suppose the idea was that it was useless to send a person down there to be killed or run off; that it was impracticable to do it at the time.

"Q. What was the idea of abandoning the thing completely, just as you would anything you threw into the highway? What was the idea of abandoning the thing completely and giving it up?—A. The idea was that it was useless to make any further attempts to work the property down there, to develop the property down there—it was impracticable.

"Q. Did you suppose that anything that was being done down there could rob you of the right of property in those rich mines, as you call them?—A. I supposed they would be left there, and whoever chose to take them would take them.

"Q. Anybody could go and denounce them?—A. I don't know the law in respect to that. There are certain times when they can be denounced and certain times when they can not.

"Q. Did it occur to you or the directors that the Government of the United States was behind you and would not permit you to be robbed of those valuable silver mines?—A. It did not then. I would not know how to proceed about it. *It was simply we were driven out for the time being and could not do anything. The time might come when, under different conditions of things, we might endeavor to carry on the business there again. But at that time we felt it would be impracticable and impossible to do so.*" (*Record*, 725, 726.)

The following is from Exall's testimony before the Commission (*Record*, 32):

"Question number nine. Why was nothing further done by you and said Company?—Ans. Because I did not dare to return and resume mining operations there. I was and am satisfied that I could not do so with safety to the life of myself or my workmen, or with safety to the property of said Company, such was the hostile feelings or prejudice against said Company as citizens of the United States, and further prosecution by said Company of mining operations there, both on the part of the citizens and the local and national authorities of the Mexican republic and the violent acts resulting from that feeling and prejudice, being encouraged and connived at by said authorities, as I have stated. And I returned to the State of New York, and *advised said Company that it was useless to attempt any further working of said mines, and gave them the facts above stated as my reason for that advice;* and I understand that said Company was so advised by others who were citizens of Mexico."

In this connection, see Cole's account of his interview with Olvera, and his report of it to one of the members of La Abra Company. (*Record*, 58.)

(14) The next specification states (*a*) that the ores were worthless; (*b*) that the only reduction of ore at the mill comprised ninety tons, being made in August, 1867, and yielding less than $5 per ton; (*c*) that the rest of the ore was so poor that, according to Exall's report of October 6, 1867, it would not pay "to throw it in the river;" and (*d*) that for this reason, if for no other, the ores were not carried off by Mexicans, and are still at the mines.

The statements (*a*) and (*c*) will be considered together.

It is to be remembered that the richest of the ores—those from La Luz—were the most rebellious, and that *Exall worked none of the ores that required roasting.* (*Record*, 273.) According to Elder (*supra*), there were 500 tons of La Luz ore on the "patio." It was from this ore that he obtained such encouraging results by the fire assay which he made for Col. De Lagnel at La Puerto (*Record*, 483), and it was from the same mine that the 80 cargas were taken which were reduced by the Mexican process in presence of Garth and Bartholow, and which produced over $400 per ton. (*Supra.*)

In his letter of February 21, 1866, to Garth, General Bartholow reported the discovery of a small vein in La Luz, an offshoot from the main vein, from which he was taking out ore worth at least $500 per ton (*Record*, 207), and on March 7 he reported that the product had become "of surprising richness," and added (*Record*, 210):

> "If the opinion of the Mexicans, including Don Ygnacio Manjarres, is worth anything, these say it will yield $1 a pound. I think this is an over-estimate, but I would not be surprised if it would assay $1,000 to the ton. I have put up about two pounds of it, which I will send with this letter, by Wells, Fargo & Co.'s express. On its receipt I would be glad if you would have it assayed and report the result. *This ore we put up in gunny sacks as fast as it is mined and store it in the wareroom.*"

In the same letter, and referring to the ores from El Cristo, he says:

> "In many pieces virgin gold is plainly seen with the naked eye. Mr. Cullins, our head miner, says he has never seen such a mine in all his experience in California and Mexico, and he has been working in mines for fourteen years."

These letters form part of the "*newly-discovered evidence.*" In Bartholow's deposition for the Company, he said (*Record*, 168):

> "The ores thus obtained were carefully assorted, packed to the hacienda, and piled up in order for beneficiation, possibly to the amount of 200 tons or more, all of which were of good quality, and their value in pure silver per carga was from 3 to 15 marks, or an average of 8 or 9 marks per carga. This I know to be true from experimental assays of average lots so assorted and tested by me."

In the "newly-discovered evidence" (*Record*, 219) Bartholow says in the last letter he wrote to Garth before leaving the mines (April 10, 1866):

> "Our ore pile is regularly and steadily increasing; the stock on hand is between 550 and 575 tons, and hereafter El Cristo will steadily increase its yield, as we have 'struck' ore in the new tunnel."

In the Senate investigation, Mexico's witness, Colonel De Lagnel, said (Sen. Rep., 2705, p. 54):

> "I remember the wild excitement among the miners, because when the ore was brought down you could see the gold in streaks as large as a big diaper-pin head, little pellets of gold along like fine shot, so as to leave a line of gold.
>
> "Senator BROWN. That, then, was very rich gold ore?

"The WITNESS. I took it for granted that that was rich ore. All the miners seemed to be in a state of excitement. They found it out by sinking a shaft, I think, for ventilation, or for the easy dropping of the ore, or some such purpose as that, from the upper level, I forget just what, and in that way they found this valuable ore."

In the last letter, which is copied in the press-copy book from De Lagnel to Garth (February 5, 1867), De Lagnel says (*Record*, 262):

"The mines are looking better, yielding *more*, and, I believe, *richer* metal."

In his letter of May 17, 1867, from Mazatlan, to Garth (*Record*, 266), Exall said:

"A day previous to my leaving Tayoltita, I spent a day at the mines. While at the La Abra, I picked up two or three pieces of ore, which was then being taken out. *Made no selection.* The evening before leaving the hacienda for this port, I assayed the several pieces. The assay was better than previous assays of any ore on the patio, giving me $378 in silver and a *large percentage in gold.* It being very late in the day before I got through melting down, was unable to get an accurate gold value. The labor from which this ore was taken is *improving, and the vein widening* ever since it was first started on."

Between that time and January 31, 1868, Exall spent nearly $3,000 in getting ore out of La Abra alone, as appears from his ledger (Coney's Exhibit No. 28), the balances from which are printed in Appellant's Evidence. (*Record*, 745.)

The quality of the ore on the patio was doubtless irregular. The testimony of Cole, an eye-witness and expert, as to its value and quantity, has already been cited. (*Supra*, 76.)

It is certainly clear from the foregoing citations, sev-

eral of which are from the "newly-discovered evidence," that the allegations (*a*) and (*c*) that the ores were worthless, and would not pay to throw into the river, are unfounded. The inferential statement (*d*) "that for this reason (the alleged worthlessness of the ores), if for no other, the ores were not carried off by Mexicans," is, as we have already seen, overwhelmingly disproved by the evidence. Chavarria's testimony on this point has already been cited. (*Supra*, 192.) Chavarria also testified that the Prefect, Mora, admitted to him that he had made profits out of the ores stolen from the Company (*Record*, 83, 19th question), and Mora said that his successor, Olvera, and Judge Quiros would not listen to Exall's complaints about ores that were stolen from the Company by people who were out of employment. (*Supra*, 218.)

Exall says that he saw "piles of very rich ores" which belonged to the Company in Judge Soto's house (*Record*, 152), and Soto admits that he had reduced ores that came from the Company's mines, but says he got them from miners who had permission to take them. (*Ib.*, 129.) The following is from Senator Brown's minority report, page 41, under the heading: "*Proof that an Immense Quantity of Ore was Stolen:*"

> "But there is a mathematical demonstration of the truth of the Company's claim that the best of the ores which were abandoned have been removed since the abandonment. The quantity of ore left on the patio when the property was abandoned has been estimated by some of the witnesses for the Mexican government as high as from 10,000 to 14,000 cargas. This was the estimate of Mr. Jesus Torres. (*Record*, 137.)
>
> "No witness makes the quantity less than 700 or 800 tons. The Umpire found the quantity to be 1,000 tons. One of the three witnesses brought up by the Mexican government from Mexico in the recent investigation testified before the subcommittee

> that the pile of ore at the hacienda was 'the same size the last time he saw it as it was the first time;' that 'there was about 500 or 600 cargas;' that he *first* saw it 'when he went to work in the mines.' This was in 1871, as fixed by the date of the denouncement of 'Rosario,' including 'La Luz'—the mine referred to by the witness (Francisco Torres), which he worked in partnership with James Granger, in whose name the denouncement had been made. (*Ibid.*, 29.) Jesus Torres swore that when the Company abandoned the mines in March, 1868, there were from 10,000 to 14,000 cargas of ore (most of it, he said, was worthless rock) at the hacienda. Francisco Torres swears that in 1871, about three years subsequent to the abandonment, there were only 500 or 600 cargas left. What had become of all the rest?"

It was not only the Mexican witness, Jesus Torres, that swore to the fact that there were from 10,000 to 14,000 cargas at the Company's hacienda, but Francisco Acosta also swore that the statement of Jesus Torres was "an exact account of the particulars of the transaction to which it alludes." It is remarkable that Jesus Torres states that this great pile was "covered over with about 300 or 400 cargas of *real ore*." (*Record*, 137.) It is also remarkable that in his examination in this suit Francisco Torres reiterates his statement that he did not take any notice of the ores at the time La Abra Company was working the mines. But, having been instructed meanwhile, he said that when he did take notice of them there were from 5,000 to 6,000 cargas! (*Record*, 549, 550.)

Dahlgren's testimony on this point is very suggestive (*Record*, 98):

> "I did, however, more than once observe said ores. The Company left great piles of them on the 'patios,' which they had taken out and packed down from their said mines, and the average of them were said to be very rich of silver metal, with a small

> percentage of gold; but I also observed there unmistakable evidences of that which had been a common report for a long time, that those piles of ores had been torn down and the richest of their metals culled out and carried away, leaving upon those extensive 'patios' the poorest of them, which were scattered over a large surface, covering, I should say, at least a quarter of an acre of ground. It was said that the Company abandoned about a thousand tons of those metals, *but not half of them remained when I saw them in 1870;* and those that were left gave evidences of having been torn down, culled out, and rejected."

Allegation (*b*) is also entirely erroneous. Instead of there being only one reduction at the mill there were at least four, and the one to which the Government alludes was not made in August but in July. See Exall's letter to Rice, July 14, 1867 (*Record*, 272), and to Garth (*ib.*, 272, 273). This was the second reduction, the first having produced the bullion which De Lagnel tried to take back with him to New York. Other reductions or "runs" are referred to in Exall's letters, in which he promised to make statements of their results to Mr. Garth, which, if ever made, *do not appear in the letter-press copy book.* These other reductions or "runs" are proved by Elder, who testified in the Senate investigation that when he was in charge of the Company's mills he extracted bullion to the value of about $4,000. (Rep. No. 2705, Sen., 559.) For the "returns from the mint for bullion," as they appear in the Company's books, see the 3d paragraph of the "Stipulation as to certain entries" (*Record*, 745), amounting to $3,804.98, exclusive of the first reduction, which does not appear in the books. Exall testified that bullion to the amount of $17,000 in all was extracted by him (*Record*, 156), but some of it was not entered in the books. (*Record*, 670.) See, also, on this same subject, *supra*, 72–78.

(15) The next specification, "that as early as July, 1867, the Company was in debt at Tayoltita over $3,000, exclusive of the $5,000 draft, above mentioned," is erroneous. But, if it were correct, then the fact that Exall carried on the Company's work and paid the Company's debts, at Tayoltita, for so long a time, without receiving a dollar from New York, would only show more clearly that the Company's receipts at Tayoltita from the mines and the mill must have been much greater than Mexico's agents and the Government have all along insisted. There was a balance of $1,733.58 cash on hand at Tayoltita July 1, 1867, and the sum total of the Company's indebtedness at Mazatlan and the mines on the same date was $3,211.35. (*Record*, 270.) This indebtedness included $1,252.94 borrowed from Echeguren, Pena & Co., at Mazatlan, and bills of $841.76 for merchandise not due until the following September and October. The difference between cash on hand and the total indebtedness was $1,478.17, which, however, was more than covered by the amount received the same month for bullion from the mint at Durango—$1,525.82, the bulk of which was paid over to Echeguren, Pena & Co., in settlement. (*Record*, 273.) So that in July, 1867, the Company was free of debt at Mazatlan and at the mines, and had its stock of goods in the store, and its supplies for the rainy season on hand, besides the near prospect of further funds from the mint at Durango for the reduction then in progress at the mill.

(16) The next specification relates to a judgment by default against the Company in New York in favor of Garth for over $50,000. This judgment (*Record*, 468) occasioned no embarrassment to the Company, for it was recovered in a friendly suit brought by John H. Garth for himself and other members of the Company for the simple pur-

pose of securing advances which they had made to the Company beyond payment for their stock.

(17) The statement in this specification that "the superintendent was obliged, in order to keep up the *semblance* of operating the mines, to employ four Mexican miners, * * * on a promise to pay them in goods," shows how firmly fixed in the mind of Mexico's agents and the Government's counsel the idea was that the Company's work in July, 1867, at Tayoltita, had practically come to a close. But in a letter of *August* 5, 1867, to Mr. Garth, *only a few days subsequent to that time,* Exall says (*Record,* 273):

"*I am now working 23 men by carga.*"

And at the date of that letter, in addition to these workmen in the mines and the Company's foremen, there was a force working at the mill, which, in the same letter (*Record,* 272, at the foot of the page), Exall said is "now running." Besides these, there were also the employees in the hacienda, the stable, the blacksmith shop, and the store.

(18) The next specification relates to an alleged letter of Exall to Garth, January 24, 1868, declaring he would leave for the East on the next steamer if he did not receive assistance from Garth. The letter cited in this specification was copied in the press-copy book, but was probably never sent, for Mr. Garth testified that he had no recollection of ever receiving it, and that he was surprised at Exall's arrival in New York. There were certain statements in the letter, about which Mr. Garth was questioned, which tended to show that it had never been sent. (*Record,* 706, 729.)

Besides, it is dated after the usual monthly sailing of

the mail steamer, which left Mazatlan about the middle of each month.

As to the other statement in the same specification, that Exall expressed his intention to Sundell and other persons of going to New York for months before he left the mines, see *supra*, 228. In his examination in this suit, Sundell deliberately evaded stating that Exall had said anything to him on the subject. (*Supra*, 229.)

(19) In this specification complainant asserts—

> "That said Exall, on the 26th day of February, 1868, placed the said James Granger in charge of the mines and property of said defendant Company, and left said mines in said month of February, and not, as sworn to by him in his affidavit in support of said claim, on or about the 20th day of March, 1868."

Why should Exall have left Tayoltita so long before the steamer left Mazatlan? That he was there on the 15th, ready to sail, and hoping "to be off to-morrow," appears from his letter of that date to Granger. (*Record*, 286, 287.)

There is in the letter-press book a copy of the following note from Exall to Granger (*Record*, 281):

> "TAYOLTITA, *Feb'y 26, 1868.*
>
> "MR. JAMES GRANGER:
>
> "*Sir:* As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this Company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property.
>
> "You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interests of the Company.
>
> "This will, to you, should occasion require it, be

ample evidence of the right possessed by you to act in their behalf.

"Very respectfully,

"CHARLES H. EXALL,

"*Adm'r La Abra S. M. Co.*"

The fact that this note is copied in the letter book does not prove conclusively that it was delivered. Granger might have found it among Exall's loose papers, as Exall suggests in his explanatory affidavit, or Exall may actually have given it to him for the purposes they had in view. Exall says (*Record*, 670):

> "Preparatory to so going, I drew a paper addressed to James Granger, which purported to invest him with my authority and to give him power to act for the Company. I had no power to confer, being only an acting superintendent, nor authority to confer such power if I had any; but *it was necessary for the purposes we had in view* that he be in possession, and that he should seem to Mexicans to have the proper authority. Had I gone then, I intended to return. But I reconsidered my decision to go at that time, and concluded I ought to remain longer before going, and await still more alarming indications from the people and authorities, and the paper I have referred to *was never delivered to Granger. Whether I destroyed it or left it among the loose and discarded papers at the hacienda of the Company I do not remember.* I remained there some time afterward, but I waited too long, and the explosion, which I believed to be several months' distant, came unexpectedly, and the expulsion of the Company, and my abrupt departure to save myself from personal harm, and the complete abandonment of everything belonging to the Company, took place as I have stated in my depositions."

As already observed, Granger had no communication with the Company whatever from the time of Exall's

departure. If he had written to the Company he would undoubtedly have copied what he wrote in the press-copy book as he did his note of August 12, 1868, to the collector of taxes. (*Record*, 282.)

This "autograph letter" of Exall's was put into Sundell's hands for translation into Spanish very soon after Exall left, and afterwards, on the 26th of September, 1873, while the Commission was in session in Washington, and more than two years before the award was rendered, it was produced in court at San Dimas and translated under judicial sanction at Granger's request. The Mexican district attorney, Gaona, who was one of the attorneys that acted for the Mexican Government in taking testimony in Mexico against the Company's claim when it was pending before the Commission, was asked on his cross-examination in this suit why Exall's "autograph," as Gaona called it, or the translation of it, was not produced before the Claims Commission at the original trial, and he said he could not answer. (*Record*, 596, cross-question 121. See, also, *supra*, 109, 110.)

Was not the reason for the non-production of this letter or the translation of it, by the Mexican authorities before the Commission, the fact that it began with the statement that circumstances were of *such a nature* as to *compel* Exall to leave for San Francisco (the readiest accessible point to the United States), and probably for New York, to inquire into the intentions of this Company? (*Record*, 281.) The hostility and opposition to the Company had not been concealed. Gaona and Hernandez, who were obtaining the defensive evidence in Mexico, knew what Soto, Mora, Perez, Olvera and Quiros had said and done, and what the circumstances were that compelled Exall to leave. So that, even if Exall had delivered that letter to Granger, and had left Tayoltita on the 26th of February, instead of a week or two

later, it would not be incompatible with his reasons for leaving, as he stated them, on his return, to Garth and Ely, and later in his depositions on behalf of the Company before the Commission.

(20) The statement in the next specification—

> "That the said Exall continued to instruct the said Granger, by letters from Mazatlan, San Francisco, New York, and Richmond, down to July 18, 1868, to keep the books and property of the Company secure, but to find out quietly how he could dispose of the remaining property"—

would have been more serious if the Government had alleged that these letters were written with the knowledge or consent of the Company. But none of the directors had any idea that Exall was writing such letters to Granger, nor that Exall, through his relations with Granger, and the latter's relations with Soto, was trying to get some interest in the mines for himself, or some pecuniary advantage, in some way, from his enforced abandonment of the Company's business and property. He was not in the employment of the Company when he wrote those letters, and they show, all too clearly, the selfish and fraudulent purpose for which they were written. Granger was to keep the books securely, not because the Company wanted to have them secreted or destroyed, but because Exall proposed to have false entries made in them by Granger (by whom the last set of books had been kept) increasing the amount of the Company's apparent indebtedness to him and to Granger, so that if Exall succeeded in forming a new company and arranging for the payment of the old company's indebtedness, he and Granger would profit by the change, even if the new company should soon share La Abra Company's fate.

Exall had heard that there were persons who thought of buying the property, and after putting himself in communication with them, he said in his letter of May 8th to Granger that he would represent to them that *things were in a secure state at the mines.*

In his next letter to Granger (June 15, 1868), he said (*Record*, 289):

> "The indebtedness of the Co. to us I have represented to these parties as being to Jas. Granger, $2,850; to C. H. Exall, $5,113.32; Bank of Cal., $5,000. The statement regarding your account and mine, *as represented*, is over and above any and everything which we have gotten from the Co. To be a greater inducement to these parties to purchase, and to show them that I have confidence in the mines, at their request I have agreed to take in stock to the amount of $2,000, and have taken upon myself to act for you to the extent in stock of $850. This I hope will meet with your approval. *Should anything occur let your statement concur with mine.*"

In his next and last letter to Granger (July 18, 1868) Exall said (*Record*, 290):

> "In my previous letter, I instructed you in reference to the figures representing your and my amt.; keep it as it is, but make no entry. * * * I will inform you in time to make proper entries, sending a list of expenses, &c."*

But Exall was very anxious that the persons whom he was trying to induce to make an offer to La Abra Company (involving the payment of the falsified amounts to him and Granger) should not "come in contact with Green, Martin, or *any one who would prejudice them*," &c. Green had been imprisoned and ousted from his San Louis mine, near Tayoltita, and Martin was associated

* These are the letters, contained in the Government's Exhibit B, which the Court of Claims excluded because written after Exall had left the Company's employment. (*Supra*, 195, 196.)

with Rice in the ownership and management of the Candelaria mines at San Dimas, and Rice (who was a friend of Garth's and Bartholow's) and had been in charge of the Durango Company's works at that place for several years, was thoroughly informed in regard to the interferences and persecutions on the part of the local authorities, which had led to the abandonment of La Abra Company's business and property at Tayoltita. It was this same Mr. Rice, who employed Chavarria to apply for protection and redress for La Abra Company to the State authorities at Durango. It will be remembered that prominent Mexicans were interested in the Durango Company, and that Dalghren, Martin and Birmingham have all testified that it was on account of that interest that their Company was protected.

Exall's scheme for a new company came to nothing, La Abra Company paid him what they owed him, and the record shows nothing of any further relations or correspondence between him and Granger.

In his explanatory affidavit Exall says (*Record*, 671):

> "I hoped that Granger, instead of some Mexican, would get possession of the property, and which I thought through his late affiliation with a Mexican family he might be enabled to do, and which he did, as I learned, except that, as I am informed, Judge Soto, the father of his wife or mistress, took possession of the Company's hacienda."

Granger (*Record*, 51), Avalos (*ib.*, 52), Martin (*ib.*, 165), and Adams (*ib.*, 185), all testify that Judge Soto took possession of the Company's hacienda and resided there after Exall left.

Martin, who lived at San Dimas from the fall of 1868 to 1870, said (*supra*):

> "Guadalupe Soto was local judge at Tayoltita, and *it was notorious that he resided at the hacienda of*

> *the claimant*, the Abra Company, after that Company was broken up there."

General Adams, who made two visits to Mexico on behalf of the Company, found Soto in possession of the Company's hacienda in 1870 and Francisco Torres in 1872. (*Record*, 185.)

It seems from Torres' testimony that Granger's relations with "Cecilia" continued for a long time—almost till his death (*Record*, 559), which occurred in Mexico in 1878 or 1879, shortly after he delivered the Company's books and papers to Gaona. Exall died about the same time—probably somewhat later.

In that same explanatory affidavit Exall told how his scheme for a new company came to naught because (*Record*, 671)—

> "The party subsequently learned, through some channel, of the hostility of Mexicans to American companies, and of the actual expulsion from the country of La Abra Company, and he dropped all negotiations on the subject, and nothing ever after came of it."

(21) In the next specification it is alleged that on May 8, 1868, Exall authorized Granger to extend and renew the agreement with Judge Soto, which Exall had entered into February 7, 1868, and that this same Soto is one of the Mexican officials afterwards alleged by said Exall and other witnesses to have driven him from the mines and compelled their abandonment by the Company.

The lease of February 7, 1868, was given to placate Soto after his seizure of the property had been held to be illegal. Exall's letter of May 8, 1868 (*Record*, 288), tells Granger not to renew this lease of the lower hacienda "more than a month at a time." Exall's object in this is now sufficiently clear, so is the fact that he and

Granger were dealing with each other in furtherance of their own schemes and without the knowledge or consent of the Company. Exall tried to interpose Granger between the Company's property and Soto, but Granger cast in his lot with the latter, and aided and abetted him in appropriating the Company's property.

(22) The next specification is, that Exall, failing to collect his unpaid salary, sued the Company for the arrears, and also endeavored at the same time to form a new company to take charge of the mines, assume the indebtedness of La Abra Company to him and Granger, and to send him (Exall) back as superintendent of the mines. Nothing further need be said in regard to this allegation, except that there is no warrant in Exall's letters for the statement that he endeavored to be sent back as superintendent of the proposed new company. He said in his letter of May 8th (*Record*, 288) that "in case this party should purchase he would accompany them to the mines," but it is evident from the following, in his next letter (*Record*, 289), that some one else expected to be superintendent:

> "The prime mover in the affair is a man who knows a good deal concerning the property, and who expects (if he succeeds in organizing a company) *to get a position at the mines.*"

(23) The next specification states that Granger remained in charge of the mines until after August 12, 1868, when he advised the Mexican Collector of Taxes that there was no money or effects with which to pay taxes, but that the superintendent would return in November, 1868, when they would be paid. Granger's letter of August 12, 1868, to the tax collector is referred to as evidence that he remained in charge of the said mines and property till that date, but it is clear that he

was acting then in the interest of Soto and himself, and not in the interest of the Company or with its knowledge or consent. It is also clear that Granger told a falsehood when he said that "the superintendent would return in November," for Exall, in his letter of May 8th, had told Granger that Garth "didn't seem to intend to do anything more," and, as we have seen, the scheme for a new company and the payment of the falsified accounts had failed. Of course Soto did not want to pay taxes on the Company's property, as long as he could keep possession without expense, and Granger seems to have thought he could put the collector off in that way.

(24) The next allegation, one of great importance, is—

> "That the said Exall and the president of the said defendant Company, George C. Collins, and the first superintendent of the said defendant Company, Thomas J. Bartholow, grossly and fraudulently misstated and exaggerated in their affidavit made in support of said claim, *the amount of money expended by said defendant Company in the purchase and operation of its mines and property, and that the said defendant Company expended in such purchase and operation much less than $200,000.*"

We have already seen that the Umpire accepted Mr. Collins' statement of the expenditures of the Company as true and allowed the amount as stated by him in the award. (*Record*, 9.)

Exall and Bartholow testified as to the *damages* which they thought the Company had suffered (*Record*, 33, 173), and Bartholow also testified as to the purchase price of the mines (*ib.*, 167), but neither of them made any statement as to the amount of the Company's actual outlay in its Mexican enterprise.

Granger, in his second examination by the Mexican government, said (*Record*, 119):

> "That he supposes it to be true that the Company has spent $303,000 in the purchase of their mines and machinery and in working the same."

Sloan, *as a witness for the Mexican government*, said (*Record*, 120):

> "That at the time he was a clerk for the Company, he saw, according to the statement of the superintendent, that they had expended $303,000 and had taken out a little less than $6,000 in silver."

This amount of $303,000 is the amount stated in the Company's memorial as the amount "they had expended in the purchase of said mines and their working" (*Record*, 5), and the Mexican district attorney had a copy of the memorial when he framed his questions for the witnesses. (*Record*, 106, foot of page.)

Mr. Collins' statement of the Company's receipts and expenditures, which was adopted by the Umpire (*supra*, 278), never has been and can not be seriously questioned. The items are as follows (*Record*, 38, 39):

"From subscriptions and sales of stock	$235,000.00
"Lent and advanced	64,291.06
"Due for rent, expenses, salaries, law expenses	42,500.00
	$341,791.06."

The date of Mr. Collins' deposition, in which this account is stated, is September 28, 1870. It will be observed that in Mr. Collins' statement (*Record*, 38, 39), he says that it was the amount received from sales of stock ($235,000), and advances ($64,291.06), making a total of $299,291.06, and not $303,000, which

> "was expended by said Company in the purchase of

said mines as aforesaid, and in the purchase of supplies, mules, machinery, and a ten-stamp mill to be used at said mines, and for the transportation of the same, and in the construction and erection of said mill, machinery, houses, dam, raceway and mining works generally at said mine, and in work upon said mines and the extraction of ores therefrom."

The annual reports of the Company put in evidence by the Government (*Record*, 39, 40), as explained by Ely (*Record*, 653, 654), Baldwin (*ib.*, 678, 680), and Garth (*ib.*, 704), and the Company's stock certificate book produced by Mr. Ely and delivered to Government counsel in this proceeding, show that the subscriptions to the stock amounted to $157,000, and that they were paid in gold or its value in United States currency. The premium on gold, which at that time was a commodity, and not current as money, is to be reckoned, under the stipulations between counsel in this suit (*Record*, 745), at 50 per cent., which would make the value of the stock subscriptions $235,500 in United States currency. This accounts for the first item in Mr. Collins' statement. The next item, "lent and advanced," $64,291.06, is largely made up of the judgment recovered by John H. Garth for himself and others, July 3, 1867, in a friendly suit, as hereinbefore stated, for money loaned in the sum of $53,670.11. (*Record*, 468.) Other sums were advanced to the Company, after the advances included in the judgment; *e. g.*, the amounts paid to De Lagnel in May or June, 1867, and to Exall, about a year later, in settlement.

The third item explains itself; and when it is remembered that the Company or the original associates had been engaged in their Mexican enterprise for more than five years at the date of Mr. Collins' first deposition (the

expenses of the visits to the mines having been incurred in the spring of 1865), the amount of $8,000 a year, in round figures, for rent, officers' salaries, and legal expenses in New York and in Mexico was certainly moderate. No question was made before the Commission in regard to the Company's receipts or expenditures. If the Mexican agent had thought that anything would have been gained by examining Mr. Collins on that subject, he could have been examined at any time before the Mexican Government filed its evidence—October 30, 1873. And it may be as well observed here as anywhere else that the Mexican Government would have had no difficulty, under the practice of the Commission, in filing any important evidence it might have obtained up to the time in 1875 when the claim was tried by the Commissioners.

It can now be shown to a demonstration that the great bulk of the amount named by Mr. Collins was actually disbursed by the Company in its operations in Mexico. According to Del Valle's testimony (*Record*, 67) he received $57,000 "in American gold," for the mines which he sold to Garth and Bartholow, and the "stock and fixtures of the store," amounting under the aforesaid stipulation to $85,500 in United States currency.

The stock issued to Hardy and Luce for their interest in La Abra mine ($22,000) was on a gold basis and amounted to $33,000 in United States currency. The balances in the books, produced by the Government, show an outlay of $169,112.14, which includes $50,700 on "mines and hacienda account," deducting which there remains $118,412.14 sent to Mexico by the Company, or drawn upon the Company from Mexico (exclusive of the purchase price of the mines) in gold, costing the Company (as per the aforesaid stipulation)

$177,618.21 in United States currency. Recapitulating, we have—

Mines, etc., purchased from Del Valle and Manjarres, U. S. currency.....	$85,500.00
La Abra (stock of Co. on gold basis) U. S. currency.....	33,000.00
Book accounts, exclusive of mines, U. S. currency.....	177,618.21
	$296,118.21

This is less by $3,172.85 than the amount stated by Mr. Collins as having been spent in Mexico, including the purchase price of the mines, but the shortage may be accounted for by the fact that the balances printed on page 745 of the *Record* are taken from Exall's ledger (Ex. 28), and that the books of original entry seem to have been posted up to a date prior to the abandonment.

(25) The statement in the next specification—

> "that instead of paying gold for twenty-two twenty-fourths of La Abra mine, as was sworn by the said Bartholow, the said defendant Company paid for such interest in La Abra mine in stock of the said defendant Company"—

is doubtless intended to suggest that Bartholow swore falsely. But Bartholow's statement was essentially true. The Company was willing to pay $22,000 in gold to the vendees for their interest in La Abra mine. But the vendees desired to invest that amount in stock at par; and so, instead of actually taking the gold, or its value in currency from the Company for their interest in the mine and paying the amount right back to the Company for the stock, they took the stock and made the conveyance "to avoid circuity of action." One of the vendees (Hardy) also took additional stock at par in gold, for

which he paid cash, like the other stockholders. (*Record*, 212.)

The concluding statement of this specification is, in substance, that the remaining two twenty-fourths interest belonged to a person who, although a claimant against Mexico before the Commission, brought no claim on account of his interest in La Abra mine. What the owner of the other two twenty-fourths did or did not do is immaterial in this case, and there is no evidence who the owner of the outstanding interest was at the time the Company's claim was filed.

(26) The next specification—that the Company did not purchase 550 feet of the Nuestra Señora de Guadalupe mine, as sworn by the said Collins, but 550 shares of the stock of the Company of the same name, is disproved by Del Valle's testimony (*Record*, 77), and by the deed to the Company. (*Ib.*, 28, Doc. No. 11). This interest in that mine was "thrown in," and the point now suggested by the Government was not raised by the Mexican agent before the Commission, although the facts were known to both sides. The point does not involve fraud or deception on either side, and it should be kept in mind that no allowance was made by the Umpire to the Company for the value of any of its mines, but (with the exception of the ore on the "patio") only for the actual expenditures or liabilities incurred by the Company in the prosecution of its enterprise, which the Umpire found it was compelled to abandon by the unlawful acts of the Mexican authorities.

(27) and (28) The statements in these specifications that the investment of the Company derived from reduction of the ores was $420.09 instead of $17,000, and that the ores extracted and abandoned were worthless, though

estimated by the Umpire at $100,000, have already been refuted in the discussion of specification (14) *supra*.

(29) and (30) The next two specifications are that the affidavits of Gamboa and Loaiza, made in May, 1870, and submitted to the Commission were false, and procured by bribery and other unlawful means by the agent of the Company, and that Dahlgren's affidavit, also submitted to the Commission, was false, and not made by said Dahlgren. The Government's failure to produce Gamboa, Loaiza, or Dahlgren, or to impeach the truth of their depositions before the Commission, has already been considered (*supra*, 209 *et seq.*), and nothing further need be said concerning them and their testimony.

Exall's Letters.

The discrepancies between Exall's depositions and some of his statements in his letters to Garth will now be considered in connection with his explanatory affidavit of May 1, 1878. This branch of the case is discussed in Senator Brown's minority report (pp. 27–35), the one in which Senator Sherman (then Chairman of the Foreign Relations Committee) concurred to the extent that the Umpire's award in this case should be regarded as final and should be paid in full. In his explanatory affidavit Exall says (*Record*, 668, 669):

> "There were a number of letters written by me while in your employment and subsequently, which, without explanation, may in part be considered as differing from my testimony. They were written between the early part of my administration of the affairs of your Company in Mexico and a time some months *after I ceased to be in your employ.*"

This covers a period of about a year; *i. e.*, from the summer of 1867, after De Lagnel's return, until the

summer of 1868, the date of the last one of Exall's four letters to Granger, being July 18, 1868. (*Record*, 290.)

Exall proceeds, alluding to Granger and himself, and to an early period of their life at the mines:

> "We saw that if the Company was actually expelled, as we were certain it ultimately would be, we might not and most probably would not be able to secure the property, as it would probably fall into other hands; but that if the Company could be induced voluntarily to abandon the property before matters culminated in an expulsion, or to part with it for a small consideration, we could probably retain the possession and secure the property to ourselves, and due protection, Mr. Granger being an English subject."

Referring to a later period, he says:

> "In my letters to Mr. Garth, treasurer of the Company, I purposely dwelt upon and *exaggerated my necessities and difficulties, and belittled the value of the mines and ores, and gave to the letters a discouraging aspect.*"

And, after alluding to his letter of February 26, 1868, to Granger, he describes the outcome as follows:

> "I remained there some time afterwards, but I waited too long, and the explosion, which I believed to be several months distant, came unexpectedly, and the expulsion and my abrupt departure to save myself from personal harm, and the complete abandonment of everything belonging to the Company, took place as I have stated in my depositions."

This was a most humiliating confession for Exall to make, and it prevents us from believing anything he says, unless corroborated. But the truth of his statement that he exaggerated his necessities and the exigencies of the situation, and belittled the value of the mines and ores, and gave to his letters a discouraging aspect, can be proved to a demonstration. Take, for example,

his letter of October 6, 1867. (*Record*, 274, 275.) Exall says in this letter that he had exhausted all the ore on hand that was worth working. But the mill was running at that time, and they were getting out ore, and continued to get out ore, as the books show, till February of the next year, *without a dollar from New York*. They were not equipped for treating the "rebellious" La Luz, which, he said in this letter, "won't pay to throw in the river." "Amparos," he said, "are not now granted."

But that was false, for, on the next page, we find his application to "the mining deputation of the district of San Ignacio" for an "amparo" for six months for Anyan [Arrayan], Sanz and Talpa, which, as the sequel shows, was successful, for when he was finally forced to leave Tayoltita, none of the mines were subject to denouncement. He never seems to have had any trouble with the mining "deputation" at San Ignacio or Gavilanes, but only with the authorities at Tayoltita and San Dimas, who had nothing to do with granting "amparos," and with their superiors at Durango who refused to afford the necessary protection or even to rebuke such violations of the rights of persons and property as Mora's and Soto's orders of dispossession, or Soto's seizure of the Guadalupe hacienda, or Exall's imprisonment in the pest house by Perez. In that same letter Exall said that he would like to retain Sloane, but was unable to give any guarantee for the payment of his wages. He did retain him, however, and paid him in full a month or two later.

He told Garth that the government had ordered that "all holders and workers of mines must present to the authorities the title deeds of their mines," and that the Prefect in San Dimas had sent for the titles of La Abra Company's mines. But a letter, printed on the same page (*Record*, 274), shows that he had informed the Prefect, nearly a month previously, that he was going in a

few days to Durango, *where the Company's titles were recorded*, and would "get a written statement to that effect." "There is no difficulty," he says, "about authorities, boundaries, or anything else concerning the mines and hacienda (*not even poor ores?*) provided there is money in hand, and *money must be sent.*" We have seen from his letters to Granger, written after the abandonment, that he was so fond of money that he proposed to falsify the accounts in order to obtain more of it than was his due. But he should not have been short of money on October 6, 1867. The Mexican government has retained for sixteen years the evidence by which we now know that he received $1,356 for bullion from the mint at Durango the previous month, and the next succeeding month, nearly a thousand dollars more. (*Record*, 745, third paragraph of stipulation.) The only letter from Granger to Garth in the press-copy book (*Record*, 276) is a short note informing him of a report (which turned out to be unfounded) that Exall, *on this November trip with bullion to Durango*, accompanied by Sloan and two mozos, had been met by a band of robbers, and everything taken from them, "*silver*, mules, arms, &c., leaving them in their underclothing to make their way into the city, about half a day's journey."

Exall said in this same letter of October 6, that he had "neither money, stock nor credit." But in his letter of December 18, 1867 (*Record*, 277), he said that he had *borrowed* $1,492 to pay off Cullins!

The Government's counsel dwells also on Exall's letter of January 24, 1868 (Brief, 161):

> "*Everything had stopped;* no means at home to take steps to save the mines from denouncement; debts right and left and nothing wherewith to pay them. 'What is your intention,' he says. 'Is it to let your interests here go to the dogs? You have

either to do this or send money out to protect them.' (Ex. B, 317.)

"But *as nothing was doing at the mines* (italics Mr. Maury's), what had become of the $17,000? Is it not as clear as noontide that it had no existence save as *the coinage of Exall's brain?*" (Italics Mr. Maury's.)

Exall had left the Company's books and papers at Tayoltita, and, as already observed, he said in his original deposition (*Record*, 31), that he could "not state dates and names with any degree of certainty." But the complainant in this suit brought forward the documentary evidence (retained by the Mexican Government since 1878), which shows that Government's counsel is mistaken when he asserts that "everything had stopped," and that "nothing was doing in the mines." The stipulation, to which reference has so often been made, admits—

"That there are entries in the books of La Abra Company in October, November and December, 1867, and *January, February and March, 1868*, by way of debit and credit, to Calderon, Rabita, Solio, Navidad, Perez, Avalos and other workmen employed at the Company's mines, or to some of them." (*Record*, 745, paragragh 1.)

The books also show, and the Government admits, that in December, 1867, the mill was debited for merchandise $563.09, and—

"That there are entries in said books in October, November and December, 1867, and *January* and *February, 1868*, against *La Abra, La Luz, Arrayan* and *Sanz* mines for fuse, gunpowder or other items." (*Record*, 745, paragraph 2.)

And, as already observed, the entries in "expense account," Exhibit 30, p. 103, printed in Respondent's Evidence, p. 94, show, under date of *February 21, 1868*,

"expenses to *Durango* $16, paid taxes hacienda, $30, mill $20, mercantile $32.50."

Was not Señor Vallarta, Mexican Minister of Foreign Affairs, wise when he instructed Señor Gaona, the Federal district attorney, to make Granger's compensation of $3,500 *contingent upon the entire exoneration of the Mexican government from liability for the award?* (*Record*, 590, ans. to cross-ques. 67.)

The case, as affected by the "newly-discovered evidence," and particularly by Exall's letters, was carefully considered by the House Committee on Foreign Affairs in the 49th Congress, which, after hearing argument on both sides, and examining the letter-press copy book, reported by a majority of ten to three (although admitting the power of Congress to waive the benefit of the treaty) in favor of the claim on the merits and the finality of the award. In regard to Exall's letters the committee said:

> "Superintendent Exall's contradictions of his testimony as revealed in his letters, now produced for the first time, are given great importance, and stress is laid upon them as imputing that his testimony was false and the claims of the Company purely pretentious.
>
> "It should, however, be remembered that Exall was acting for his own interest, and that his letters conformed to what that interest seemed to require. He was a creditor of the Company. He was in Mexico, and needed money, and as an inducement to the Company to send him money he apparently colored the facts he recited in his newly-presented letters under the impulses of the moment, and described conditions to suit his necessities. We can not justly hold the Company responsible for his course any more than we could justly hold a nation responsible for the conduct of a traitor.
>
> "True, his testimony is apparently discredited, but he is dead, and explanations which, if living,

he ought to make, are now impossible. But, did this case rest upon his testimony, it would be nevertheless discredited, and, in our opinion, it should be disregarded; and, *disregarding it, there is an abundance of sound testimony to sustain the award.*" (Rep. No. 3474, H. R., 49th Cong., 1st Sess., p. 5.)

The Umpire and the Award.

The Government has not produced a scintilla of proof showing that any of the evidence on which Sir Edward Thornton based his award was corruptly obtained by or for the Company, or was in fact false. But it has produced the Company's books, which corroborate Mr. Collins' testimony as to the Company's expenditures in Mexico, and entirely overthrow the Government's theory that work had practically stopped at the mines, and that Exall was getting nothing from his mining operations for a long period before the abandonment.

When Sir Edward Thornton consented to serve as Umpire, the President of the United States said in his annual message to Congress:

> "The distinguished representative of Her Britannic Majesty at Washington has kindly consented, with the approval of his government, to assume the arduous and responsible duties of Umpire in this Commission, and to lend the weight of his character and name to such decisions as may not receive the acquiescence of both the arbitrators appointed by the respective governments." (For. Rels., 1873, p. v.)

At the close of the Umpire's labors, the President made the following reference to his services in his annual message to Congress:

> "I am pleased to be able to express the acknowledgments due to Sir Edward Thornton, the Umpire of the Commission, who has given to the consideration of the large number of claims submitted

> to him much time, unwearied patience, and that firmness and intelligence which are well known to belong to the accomplished representative of Great Britain, and which are likewise recognized by the representative in this country of the Republic of Mexico." (For. Rels., 1876, p. viii.)

The qualifications of Sir Edward for the arduous work that was devolved upon him by Señor Zamacona's rejection of nearly all the claims of citizens of the United States, were exceptional. After graduating at Cambridge in 1840, he had been trained in the English fashion for the diplomatic service, in which his father had been eminent. He was attaché *in Mexico* in 1845, and secretary of legation in 1851 in the same country. After serving as secretary to the special mission to the river Platte, under the late Sir Charles Hotham, from April, 1852, to October, 1853, he became chargé d'affaires and consul-general in New Grenada, and was subsequently transferred to Uruguay. In 1859 he was appointed minister to the Argentine Confederation, and in 1865 he was sent on a special mission to Brazil, where he resided later as minister at the court of the emperor. In September, 1867, he was appointed minister to Portugal, but before he could enter on his duties, he was transferred in December of the same year to Washington. He was of the Queen's privy council and a member of the Joint High Commission for the settlement of the "Alabama" claims in 1871. He was a D. C. L. of Oxford (1877) and L. L. D. of Harvard (1879). He was arbitrator of the Ontario boundaries in 1878, and transferred to St. Petersburg as Ambassador in 1881, and to Turkey in 1884, and on January 1, 1887, he was retired with a pension.

When he was appointed Umpire (1873) he had been in the diplomatic service for twenty years in Spanish American countries—much of the time *in Mexico*—and

in the Brazilian empire. He was a thorough Spanish scholar, and, what was still of more importance, thoroughly acquainted with the political and social conditions prevailing in Spanish America, and with the idiosyncrasies and character of Spanish Americans.

It appears from an analysis of the Umpire's award that he found from the evidence as follows: *

(1) That La Abra Silver Mining Company was entitled to be considered a corporation or company of citizens of the United States, in accordance with the terms of the convention of July 4, 1868, having been duly chartered in conformity with the laws of the State of New York. (Certification of incorporation, *Record*, 24, Doc. No. 6.)

(2) That the enterprise on which the said Company entered of purchasing, denouncing, and working certain mines in the State of Durango in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations. (*Record*, 148, 167, 175, 665, 666.)

(3) That prior to the purchase of its mines by the said Company the Mexican government issued proclamations inviting foreigners to bring their capital into Mexico and promising them certain advantages and full protection. (*Record*, 35, 42, 57, 84, 87, 192, 193.)

(4) That the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them, and to which they were entitled by treaty,

* We attach the references to the evidence which justifies each of the findings of the Umpire.

not only showed themselves a spirit of bitter hostility to the Company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. (See Arts. III, VIII, and XIV of the Treaty of 1831, revived by Art. XVII of the Treaty of Guadalupe Hidalgo, and in force when the Company was organized and while it was at work in Mexico; and for references to and extracts from the testimony showing the hostility and aggressions of the authorities, see *supra*, 3.) *

(5) That the superintendent of the mines took such steps as he could to obtain protection from these authorities, and, finding his efforts in vain, he appealed, through a lawyer of high character, to the highest authorities in the State, who declined to interfere in the matter. (*Supra*, 188–193; 311–316; *Record*, 82, 83, 89.) *

(6) That in presence of such opposition to their efforts the Company was compelled to abandon its enterprise and property at Tayoltita. (*Record*, 31, 32, 48, 49, 60, 61, 68, 69, 70, 83, 87, 119, 120, 128, 129, 152, 154–158, 655, 656, 712, 713.) *

(7) That the Company invested in its Mexican enterprise the sum of $341,791.06, and that in addition thereto it derived the sum of $17,000 from reduced ores. (*Record*, 38, 39, 156.)

(8) That the Company had extracted from the mines and deposited at the mill 1,000 tons of ore worth an average of $100 per ton. (*Supra*, 76, 77.)

* Extracts from the evidence will be found throughout subdivision IX *supra*, from p. 179 to the close of the argument on the facts.

(9) And that as matter of law the true measure of damages was not the alleged value of the mines, or what they might have produced, as claimed by the Company in its memorial, *i. e.*, $3,000,000, but the actual amount of the Company's expenditures, with interest, and the value of the ores which had been mined and were on hand at the time of the abandonment.

Upon the whole evidence the appellant confidently submits to the court—

(1) That the evidence before the Umpire justified his award.

(2) That the Government has not proved that the evidence on which the award was founded, or any material part of the same, was obtained by fraud, effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Company, its agents, attorneys, or assigns.

(3) That the said award was not obtained in whole or part by means of false swearing or other false and fraudulent practices on the part of the said La Abra Company, its agents, attorneys, or assigns.

(4) That the court should reverse the decree of the Court of Claims and direct that the portion of the award remaining undistributed be paid to La Abra Company or its assigns.

If this court does not review the facts because it decides that the act is unconstitutional, or that it has no jurisdiction to entertain the appeal, then the cause should be remanded with instructions to dismiss the bill.

Or if the court holds that the court below should have applied the ordinary principles of equity to this proceeding, and that if so applied the complainant would have been without equity, then the cause should be remanded with instructions to dismiss the bill.

CRAMMOND KENNEDY,
Solicitor and of Counsel for Appellant.

J. M. WILSON,
JNO. C. FAY,
E. I. RENICK,
Of Counsel.

NOVEMBER 21, 1898.

APPENDICES.

APPENDIX I.

(15 Stats., 679.)

Convention between the United States of America and the Republic of Mexico for the Adjustment of Claims.

Concluded July 4, 1868; proclaimed February 1, 1869.

By the President of the United States of America.

A Proclamation.

Whereas, a convention between the United States of America and the Republic of Mexico, providing for the adjustment of the claims of citizens of either country against the other, was concluded and signed by their respective plenipotentiaries, at the city of Washington, on the fourth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, which convention, being in the English and Spanish languages, is, word for word, as follows:

Whereas, it is desirable to maintain and increase the friendly feelings between the United States and the Mexican Republic, and so to strengthen the system and principles of republican government on the American continent; and whereas, since the signature of the treaty of Guadalupe Hidalgo, of the 2d of February, 1848, claims and complaints have been made by citizens of the United States, on account of injuries to their persons and their property by authorities of that republic, and similar

claims and complaints have been made on account of injuries to the persons and property of Mexican citizens by authorities of the United States; the President of the United States of America and the President of the Mexican Republic have resolved to conclude a convention for the adjustment of the said claims and complaints, and have named as their plenipotentiaries—the President of the United States, William H. Seward, Secretary of State, and the President of the Mexican Republic, Matias Romero, accredited as envoy extraordinary and minister plenipotentiary of the Mexican Republic to the United States, who, after having communicated to each other their respective full powers, found in good and due form, have agreed to the following articles:

ARTICLE I.

All claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of the Mexican Republic, arising from injuries to their persons or property by authorities of the Mexican Republic, and all claims on the part of corporations, companies, or private individuals, citizens of the Mexican Republic, upon the government of the United States, arising from injuries to their persons or property by authorities of the United States, which may have been presented to either government for its interposition with the other since the signature of the treaty of Guadalupe Hidalgo between the United States and the Mexican Republic of the 2d of February, 1848, and which yet remain unsettled, as well as any other such claims which may be presented within the time hereinafter specified, shall be referred to two Commissioners, one to be appointed by the President of the United States, by and with the advice and consent of the Senate, and one by the President of the Mexican Republic. In case of the

death, absence, or incapacity of either Commissioner, or in the event of either Commissioner omitting or ceasing to act as such, the President of the United States, or the President of the Mexican Republic, respectively, shall forthwith name another person to act as Commissioner in the place or stead of the Commissioner originally named.

The Commissioners so named shall meet at Washington within six months after the exchange of the ratifications of this convention, and shall, before proceeding to business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to public law, justice, and equity, without fear, favor, or affection to their own country, upon all such claims above specified as shall be laid before them on the part of the governments of the United States and of the Mexican Republic, respectively; and such declaration shall be entered on the record of their proceedings.

The Commissioners shall then name some third person to act as an Umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and in each and every case in which the Commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be Umpire in that particular case. The person or persons so to be chosen to be Umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the Commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of such person or persons, or of his or their

omitting, or declining, or ceasing to act as such Umpire, another and different person shall be named, as aforesaid, to act as such Umpire, in the place of the person so originally named, as aforesaid, and shall make and subscribe such declaration as aforesaid.

ARTICLE II.

The Commissioners shall then conjointly proceed to the investigation and decision of the claims which shall be presented to their notice, in such order and in such manner as they may conjointly think proper, but upon such evidence or information only as shall be furnished by or on behalf of their respective governments. They shall be bound to receive and peruse all written documents or statements which may be presented to them by or on behalf of their respective governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each government on each and every separate claim. Should they fail to agree in opinion upon any individual claim, they shall call to their assistance the Umpire whom they may have agreed to name, or who may be determined by lot, as the case may be; and such Umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side as aforesaid, and consulted with the Commissioners, shall decide thereupon finally and without appeal. The decision of the Commissioners and of the Umpire shall be given upon each claim in writing, shall designate whether any sum which may be allowed shall be payable in gold or in the currency of the United States, and shall be signed by them respectively. It shall be competent for each government to name one person to attend the Commissioners as agent on its behalf, to present and support claims on its behalf, and to answer claims made

upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The President of the United States of America and the President of the Mexican Republic hereby solemnly and sincerely engage to consider the decision of the Commissioners conjointly or of the Umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him respectively, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

It is agreed that no claim arising out of a transaction of a date prior to the 2d of February, 1848, shall be admissible under this Convention.

ARTICLE III.

Every claim shall be presented to the Commissioners within eight months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, or of the Umpire in the event of the Commissioners differing in opinion thereupon, and then and in any such case the period for presenting the claim may be extended to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years and six months from the day of their first meeting. It shall be competent for the Commissioners conjointly, or for the Umpire if they differ, to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Convention.

ARTICLE IV.

When decisions shall have been made by the Commissioners and the Arbiter in every case which shall

have been laid before them, the total amount awarded in all the cases decided in favor of the citizens of the one party shall be deducted from the total amount awarded to the citizens of the other party, and the balance, to the amount of three hundred thousand dollars, shall be paid at the city of Mexico, or at the city of Washington, in gold or its equivalent, within twelve months from the close of the Commission, to the government in favor of whose citizens the greater amount may have been awarded, without interest or any other deduction than that specified in Article VI of this convention. The residue of the said balance shall be paid in annual installments to an amount not exceeding three hundred thousand dollars in gold or its equivalent, in any one year until the whole shall have been paid.

ARTICLE V.

The high contracting parties agree to consider the result of the proceedings of this Commission as a full perfect, and final settlement of every claim upon either government arising out of any transaction of a date prior to the exchange of the ratifications of the present convention; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE VI.

The Commissioners and the Umpire shall keep an accurate record and correct minutes of their proceedings, with the dates. For that purpose they shall appoint two secretaries versed in the language of both countries to

assist them in the transaction of the business of the Commission. Each government shall pay to its Commissioner an amount of salary not exceeding forty-five hundred dollars a year in the currency of the United States, which amount shall be the same for both governments. The amount of compensation to be paid to the Umpire shall be determined by mutual consent at the close of the Commission, but necessary and reasonable advances may be made by each government upon the joint recommendation of the Commission. The salary of the secretaries shall not exceed the sum of twenty-five hundred dollars a year in the currency of the United States. The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commission, provided always, that such deductions shall not exceed five per cent. on the sums so awarded. The deficiency, if any, shall be defrayed in moieties by the two governments.

ARTICLE VII.

The present convention shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by the President of the Mexican Republic, with the approbation of the Congress of that Republic, and the ratifications shall be exchanged at Washington within nine months from the date hereof, or sooner if possible.

In witness whereof the respective plenipotentiaries have signed the same and have affixed thereto the seals of their arms.

Done at Washington the fourth day of July, in the year of our Lord one thousand eight hundred and sixty-eight.

WILLIAM H. SEWARD. [L. S.]
M. ROMERO. [L. S.]

And whereas the said convention has been duly ratified on both parts, and the respective ratifications of the same have this day been exchanged:

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this first day of February, in the year of our Lord one thousand
[SEAL.] eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD,

Secretary of State.

APPENDIX I*a*.

(20 Stats., 144.)

CHAP. 262.—**An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico concluded on the fourth day of July, eighteen hundred and sixty-eight.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, authorized and required to receive any and all moneys which may be paid by the Mexican Republic under and in pursuance of the conventions between the United States and the Mexican Republic for the adjustment of claims, concluded July fourth, eighteen hundred and sixty-eight, and April twenty-ninth, eighteen hundred and seventy-six; and whenever, and as often as, any installments shall have been paid by the Mexican Republic on account of said awards, to distribute the moneys so received in ratable proportions among the corporations, companies, or private individuals respectively in whose favor awards have been made by said Commissioners, or by the Umpires, or to their legal representatives or assigns, except as in this act otherwise limited or provided, according to the proportion which their respective awards shall bear to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto. And in making such distribution and payment, due regard shall be had to the value at the time of such distribution of the respective currencies in which the said awards are made payable;

and the proportionate amount of any award of which by its terms the United States is entitled to retain a part shall be deducted from the payment to be made on such award, and shall be paid into the Treasury of the United States as a part of the unappropriated money in the Treasury.

SEC. 2. That out of any moneys in the Treasury not otherwise appropriated, a sufficient sum is hereby appropriated to enable the Secretary of the Treasury to pay to the Secretary of State of the United States, in gold or its equivalent, the equivalent of fifty thousand five hundred and twenty-eight dollars and fifty-seven cents in Mexican gold dollars, and ten thousand five hundred and fifty-nine dollars and sixty-seven cents in American gold coin, and eighty-nine thousand four hundred and ten dollars and seventeen cents in United States currency, said sums being the aggregate in said currencies respectively of the awards made under the said convention of July fourth, eighteen hundred and sixty-eight, in favor of citizens of the Mexican Republic against the United States, and having been deducted from the amount awarded in favor of citizens of the United States, and payable by Mexico, in accordance with article four of the said treaty; and that said sums, when paid to the Secretary of State, as aforesaid, shall be regarded as part of the awards made under the said treaty, to be paid or distributed as herein provided.

SEC. 3. That out of the payments and installments received from Mexico, as aforesaid, on account of said awards, and out of the moneys which shall be received by the Secretary of State under the provisions of this act, the Secretary of State shall, when and as the same shall be received and paid, and before any payment to claimants, deduct therefrom and retain a sum not to exceed five per centum of said moneys awarded to citi-

zens of the United States, until the aggregate of the amounts so deducted and retained shall equal the sum of one hundred and fourteen thousand nine hundred and forty-eight dollars and seventy-four cents, being the amount of the expenses of the Commission, including contingent expenses paid by the United States in accordance with article six of the treaty, as ascertained and determined in pursuance of the provisions of the said treaty; which said sums, when and as the same are deducted and retained, shall be, by the Secretary of State, transmitted to the Secretary of the Treasury, and passed to the account of, and be regarded as, unappropriated money in the Treasury.

SEC. 4. That in the payment of money, in virtue of this act, to any corporation, company, or private individual, the Secretary of State shall first deduct and retain or make reservation of such sums of money, if any, as may be due to the United States from any corporation, company, or private individual in whose favor awards shall have been made under the said convention.

SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted, that the President of the United States be and he is hereby requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law or considerations of justice and equity, require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them until such case or cases shall be retried and decided in such manner as the govern-

ments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively, shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified or affirmed as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them.

Approved, June 18, 1878.

APPENDIX I*b*.

(27 Stats., 409.)

CHAP. 14.—An act to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress," and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act, the Attor-

ney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award, or any part thereof, in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission, in respect to the claim of the said La Abra Silver Mining Company, was obtained, as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the

original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said Company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver

Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

Approved, December 28, 1892.

APPENDIX II.

Mr. Evarts' Report.

46TH CONGRESS, 2d Session. } SENATE. { Ex. Doc. No. 150.

MESSAGE from the PRESIDENT OF THE UNITED STATES, communicating, in compliance with a resolution of the Senate of the 27th of February last, information concerning certain awards made by the late United States and Mexican Commission.

APRIL 16, 1880.—Referred to the Committee on Foreign Relations and ordered to be printed.

To the Senate of the United States:

In response to the resolution of the Senate of the 27th of February last, concerning the action had by the Executive with respect to the investigation of certain cases in which awards were made by the late United States and Mexican Commission, I transmit herewith a report of the Secretary of State, to whom the matter was referred.

R. B. HAYES.

WASHINGTON, *April* 15, 1880.

DEPARTMENT OF STATE,
Washington, April 13, 1880.

To the PRESIDENT:

The Secretary of State, to whom was referred the following resolution of the Senate of the 27th of February, 1880—

"*Resolved*, That the President be requested, if in his opinion not inconsistent with the public service,

to inform the Senate what action, if any, has been taken by him under authority of section 5 of the act approved June 18, 1878, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868,' and of the grounds of such action, and what further action, if any, the honor of the United States may, in his opinion, require to be taken in the premises"—

Has the honor to report.

The act passed by Congress "to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868," contained the following section:

"SEC. 5. And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing; therefore, be it enacted that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct; and, in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards, respectively, shall be held to abide the event, and shall be dis-

posed of accordingly; and the said present awards shall be set aside, modified, or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them."

It having been referred by you to the Department of State to institute the investigation required by this action, I gave the subject the most careful examination. I reviewed the proceedings of the Commission, including the testimony originally submitted, the arguments made by the counsel both for the Republic of Mexico and the United States, the opinions of the members of the Commission, and the final decision of the Umpire. I considered the representations of the Mexican Government, as set forth in its diplomatic communications to this Department, and subjected to patient scrutiny the supplemental evidence by which those representations had been supported. In addition to this, I heard counsel both for the Mexican Government and the parties interested in these awards.

The most impressive complaint of the Mexican Government in the La Abra case bore upon the award of damages as fraudulently exaggerated.

In the Weil case, the Government of Mexico asserts that no such case had ever had any real existence; that there never was any such property as is alleged to have been seized; that the parties claimant never owned, directly or as agents, any such property; that the seizure of the property is in all its details a pure fiction, and that the evidence by which the whole claim is established is spurious and corrupt.

Upon these complaints, and the examination given to them as above set forth, on the 8th of August last I re-

ported to you my conclusions as to the proper disposition of the matter by the executive government, as follows:

"*First.* I am of opinion that, as between the United States and Mexico, the latter government has no right to complain of the conduct of these claims before the tribunal of Commissioners and Umpire provided by the convention, or of the judgments given thereupon, so far as the integrity of the tribunal is concerned, the regularity of the proceedings, the full opportunity, in time and after notice, to meet the case of the respective claimants, and the free and deliberate choice exercised by Mexico as to the methods, the measure, and the means of the defense against the same.

I conclude, therefore, that neither the principles of public law nor considerations of justice or equity require or permit, as between the United States and Mexico, that the awards in these cases should be opened and the cases retried before a new international tribunal, or under any new convention or negotiation respecting the same between the United States and Mexico.

Second. I am, however, of opinion that the matters brought to the attention of this government on the part of Mexico do bring into grave doubt the substantial integrity of the claim of Benjamin Weil, and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of the La Abra Silver Mining Company, and that the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud.

If such further investigation should remove the doubts which have been fairly raised upon the representations of Mexico, the honor of the United States will have been completely maintained. If, on the other hand, the claimants shall fail in re-

moving these doubts, or they should be replaced by certain condemnation, the honor of the United States will be vindicated by such measures as may then be dictated.

Third. The executive government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress. I would advise, therefore, that the proofs and the conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress for the exercise of their plenary authority in the matter.

Fourth. It may be that, as the main imputation in the case of the La Abra Silver Mining Company is of fraudulent exaggeration of the claim in its measure of damages, it may consist with a proper reservation of further investigation in this case to make the distribution of the installments in hand.

I have this subordinate consideration still under examination, and, should you entertain this distinction, will submit my further conclusions on this point."

These conclusions having been approved by you, and the point reserved for further consideration in the La Abra case having again been referred to me, on the 3d of September last I reported to you my conclusions upon the same, as follows:

"The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusion on that point.

1. Upon a renewed examination of the matter, as laid before me by the Mexican Government, I am

confirmed in the opinion that the proper limits of the further consideration, which the honor of the government should prompt it to give to this award, should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission to which, under the provision of the convention, it was presented by this government.

2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation, should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimant, reserving the question as to later installments.

If this conclusion should receive your approval, the payment can be made upon the verification at the Department of State of the rightful parties to receive it."

This latter conclusion having also received your approval, and the results stated in both these reports having been communicated both to the Mexican Government and the claimants, the payment was made upon the La Abra award of the distributive share of the installments then in hand, and payment was withheld of the distributive share of such installments upon the Weil award.

The parties interested in these awards have from time to time preferred requests for a renewed consideration by the Executive of the questions arising for his determination under the act of Congress of June 18, 1878, and have particularly insisted that, in deciding against opening these awards diplomatically and re-examining them by a new international commission, the whole dis-

cretion vested in the Executive as a part of the treaty-making power and under the special provision of the act of Congress was exhausted, and that the payments should be no longer suspended in respect to these cases, or either of them. A solicitous attention to the rights of the claimants and the duty of the Executive in the premises has confirmed me in the opinion that Congress should determine whether "the honor of the United States" requires any further investigation in these cases, or either of them, and provide the efficient means of such further investigation, if thought necessary.

In the conclusions to which I came, and which I had the honor to submit to your examination, I was principally governed by the following considerations:

1. In the complaints of the Mexican Government there is not the slightest impeachment, express or implied, of the character or composition of the Commission, of its methods of procedure, or of the entire regularity and integrity of its actual proceedings. It was composed of able and eminent men, enjoying the full confidence of the governments by whom they were respectively appointed, and the Umpire selected, Sir Edward Thornton, was pre-eminently fitted for his laborious and responsible duties by his long diplomatic experience, his recognized ability, his high character, and his special knowledge of the two countries whose citizens and governments were interested in the arbitration.

2. Before this Commission the government of Mexico had full opportunity and ample time to present its defense, both in evidence and argument, against any claim that was submitted. In the La Abra case a large amount of testimony was taken on both sides, the comparison and valuation of which was within the power of the Commission, and the opinion of the Umpire shows that it was carefully considered.

In the Weil case it is true that the Mexican government submitted no testimony, and that the case was decided upon the evidence offered by the claimants. But the Mexican Commissioner explicitly declined the offer of further time to produce such testimony, although he professed that his government had such in possession, saying upon the trial:

> "There is in the present case the still more serious consideration that there is sufficient evidence upon which to judge of the claim, and that by opening the door to new testimony it would only serve to show the claimant wherein the edifice which he had erected upon his imagination was weak, and by enlightening him how to crown his intrigue by new efforts, which, although they would not change the aspect of the case, might lead him to confirm it."

3. The treaty under the provisions of which the Commission was appointed was explicit in recognition of the finality of its action. By Article II of that convention, the two governments bound themselves to consider the decisions of the Commissioners and of the Umpire as absolutely final and conclusive, and to give full effect to such decisions without any objection, evasion, or delay whatsoever; and, by the fifth article, the high contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect, and final settlement of every claim upon either government arising from the transactions prior to the exchange of ratifications thereof.

4. Aside from this special provision of the finality of the decision of the Commission, in the very act of its creation, it would seem impossible to review and retry any individual case without opening the door to other reclamations of the same sort. In addition to these cases, with the result of which the Mexican Government is dissatisfied, there are many others which failed of prepara-

tion in time, which were rejected on principles not always acquiesced in by those interested, and some in which the claimants deemed the awards very insufficient. The adherence of the Government of the United States to the strict letter of its convention that the decision of the Commissioners should be absolutely final in every case, and a complete bar to any claim arising from transactions prior to its ratification, has hitherto prevented any effort on the part of this Government to renew such discussion in favor of its citizens. But if it be once admitted that for any reason short of an impeachment of the integrity of the Commission its proceedings can be reopened for review and its decisions for reversal, there will not be wanting numerous urgent appeals to the justice and sympathy of the Government to extend this measure of relief to many who think that their claims have been erroneously estimated or rejected.

Lastly. The principle of the settlement of international differences by arbitral commissions is of such deep and wide-reaching interest to civilization, and the value of such arbitration depends so essentially upon the certainty and finality of its decision, that no government should lightly weaken its influence or diminish its consideration by making its action the subject of renewed discussion. It is only in extreme cases, where the Commission is itself charged with corruption or where it has clearly exceeded its powers in deciding matters not submitted to its judgment, that prompt and cheerful acquiescence should not be rendered to its action. No such charge is here suggested. It may be true that in this or that instance more adequate justice might have been rendered. The methods and processes of such tribunals, which in time it may be confidently hoped will be improved and perfected, are not yet so complete as to eliminate much oppor-

tunity of error. But the results of such an arbitration, covering, as this did, large, complicated, and numerous transactions, deciding not upon oral testimony winnowed by cross-examination, but upon the contradiction of vague affidavits, can not be fairly judged by the apparent errors of this or that individual case. There is, probably, no just ground for saying that the aggregate of the awards against Mexico more than equaled the just claims of our citizens, and much complaint has been made that such aggregate falls quite short of them. But the awards made by this Commission were something more than the settlement of mere private claims—it was the adjustment of long-standing national differences. And if in the result more or less was added to or taken from particular awards, still if on the whole a fair and just balance has been struck, if considering all that has been given and all that has been refused the examination has been careful and the judgment impartial, it is the interest and the duty of governments to maintain it.

While these considerations led to the conclusion that these cases ought not to be made the subject of a new international commission, I was yet of opinion that "the honor of the United States" was concerned to inquire whether in these cases, submitted by this Government to the Commission, its confidence had been seriously abused, and the Government of Mexico, acting in good faith in accepting a friendly arbitration, had been subjected to heavy pecuniary imposition by fraud and perjury in the maintenance of these claims, or either of them, before the Commission. In furtherance, however, of this opinion, it seemed to me apparent that the Executive discretion under the act of Congress could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made, and should provide an

adequate procedure for its conduct, and prescribe the consequences which should follow from its results.

Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the convention.

WM. M. EVARTS.

APPENDIX III.

Charles B. Dahlgren's examination by a subcommittee of the Senate Committee on Foreign Relations, February 1, 2, 8, and 9, 1889.

[From Report No. 2705, Part 2—Views of Minority—50th Cong., 2d Sess., pp. 54-66.]

The references are to the appendix of the majority report, in which Dahlgren's testimony is printed—pp. 643–740.

In availing itself of the opportunity afforded by the Senate to show that La Abra award should be reopened, the Mexican Government called but one of the witnesses whose depositions had been filed with the Joint Commission. This was Captain Charles B. Dahlgren, whose deposition on behalf of the Company had been taken at Mazatlan before United States Consul Sisson on the 18th of September, 1872. Five years afterwards—in November, 1877—Captain Dahlgren was put into communication with Mr. Robert B. Lines by Mr. Alfred A. Green, who, it will be remembered, had been sent to Mexico by General Slaughter, under his contract with the Mexican Government, "for the purpose of securing testimony in proof of the fraudulent character of said claim." Green met Dahlgren in San Francisco, and made a statement to him, some account of which will be found in Dahlgren's testimony before the subcommittee (*ibid.*, pp. 712–715). After his interview with Green, Dahlgren wrote the following letter, which has been printed as part of the "new evidence offered by Mexico" (Ex. Doc. 103, p. 285), and may be found in the appendix, p. 644:

"SAN FRANCISCO, CAL'A, *Nov.* 12, 1877.

Mr. ROBERT LYONS,
U. S. Senate P. O., Washington:

SIR: I have good reasons for knowing that the testimony under my signature, as offered by A. W. Adams in the La Abra case or claim, has been perverted, and is therefore fraudulent, *and* should be treated as such.

My testimony was taken in rough notes *and* left for him to copy or fill in over my signature on a clean sheet, as I was called off on important business.

I know now that said testimony has been perverted *and* by said A. W. Adams.

Very truly,

C. B. DAHLGREN."

"My address here is: Capt. C. B. Dahlgren, Pacific Refining *and* Bullion Exchange, cor. Brannan 7th, S. F.

P. S. I understand said A. W. Adams boasted he had obtained my signature by the use of a 'good round sum of gold.' Advise me how I can bring him before a court to substantiate said statement.

C. B. D."

"I refer to Gen. Sherman and Rev. B'y'n Sunderland."

Dahlgren's interview with Green and his opinion of him appear in his testimony before the subcommittee as follows (*ibid.*, pp. 644, 645):

"The WITNESS. I was informed that I had testified in the Abra case, and that my testimony had been purchased for a 'good round sum of gold.'

By the CHAIRMAN:

Q. Who was your informant?—A. A. A. Green.

Q. Where does he live?—A. He is living a great deal in the Republic of Mexico.

Q. Was he your acquaintance?—A. He was an acquaintance of mine; yes, sir.

Q. A man whose opinion you respected?—A. I

knew nothing against him. He had been the original owner of the Candalaria mine, of which I had been the superintendent, and therefore I had been brought into business contact with him.

Q. In consequence of that information what did you do?—A. He then told me *what my testimony had been*, and asked me if that was the case. I was very angry, and I then put myself into communication with Mr. Lines and wrote that letter to him."

At that time, Green was in the employment of General Slaughter under his contract with the Mexican Government. Green had probably examined Dahlgren's deposition in Washington; at all events, he pretended to be familiar with its contents, and undertook to tell Dahlgren what his "testimony had been." There is no evidence that Green stated the contents of Dahlgren's deposition to him correctly, or that Adams had ever said he had obtained the deposition from Dahlgren by bribery. There is not the least likelihood that Adams ever made such a statement, or would have made it, even if it had been true, for the award in favor of La Abra Company had been rendered only recently, and Adams was largely interested in it, and aware of the opposition to its payment by the Mexican Government, and he would, therefore, have been the last man to say anything reflecting upon its integrity. But, of course, Green's representations were calculated, as they were doubtless intended, to make Dahlgren angry and eager to prevent his deposition from being of any further service to Adams or the Company.

The measures he would be likely to pursue when in such a frame of mind can be imagined from his conduct as described in the course of his examination before the subcommittee. It will be remembered that Green as well as Dahlgren had a grudge against Adams, and that Green had, besides, a pecuniary interest, under his agreement with Slaughter, in making Dahlgren hostile to the Company and the award.

Great importance is given to Dahlgren's testimony before the subcommittee by the fact, already mentioned, that he was the only witness produced before the subcommittee by the Mexican Government of all the witnesses whose depositions were filed with the Joint Commission; also by the fact that it was on his letter of November 12, 1877 (*supra*), that the Mexican Government based its charge that testimony had been "forged" by Adams in favor of the Company's claim; and this importance is enhanced when it is remembered that Dahlgren's examination may fairly be regarded as showing the best that could be done in the way of impeaching the award if the question of its validity should ever be submitted to the Court of Claims as proposed by Mr. Morgan's bill. In this view it is considered proper to examine Dahlgren's testimony before the subcommittee at considerable length.

A critical examination of Dahlgren's letter shows that when it was written—more than five years after his deposition was taken at the United States consulate at Mazatlan—he had forgotten at what length he had been examined, and supposed that a single sheet would have contained his deposition. "My testimony," he says in his letter, "was taken in *rough notes*, and left for him to copy or fill in, over my signature, on *a clean sheet*." The original deposition on file in the Department of State contains eight sheets, written on both sides, and signed by Dahlgren near the middle of the sixteenth page. He admits his signature to be genuine, and his testimony shows that his answers to Adams's questions (which answers were not written out by Adams but by Peña) were quite voluminous. These questions and answers which Dahlgren in his letter calls "rough notes," were, he says, corrected by him—interlined and crossed out to such an extent as to make them unfit for use as a deposition. A

fair copy was therefore necessary, and Dahlgren's testimony shows that there was abundance of time for making it, for he testifies that he went to the consul's office "early in the morning," and was there on that business until 1, 2, or 3 o'clock in the afternoon. (*Ibid.*, p. 650.)

The idea that a man of his intelligence, holding the position of superintendent of the Durango Mining Company and consul of the United States, should leave his "testimony" to be "filled in," *over his signature*, "on a clean sheet," in support of a claim for such a large sum against the Government to which he was accredited in his consular capacity, seems preposterous, and if anybody but himself had made such a charge against him it would have seemed too improbable for belief. All the presumptions would have been against it. This is how it seems to have struck Mr. Lines, for when he was asked in his cross-examination whether he had advised Dahlgren, as requested in his letter, how Adams could be brought before a court to substantiate his charge of bribery, he replied (*ibid.*, p, 927):

> "I regarded the statement in Dahlgren's letter as *a very extraordinary one*, and I thought perhaps an *improbable* one; that he had allowed his testimony to be taken in rough notes in that manner, and I thought that Mr. Dahlgren was much more concerned in the matter than the Mexican Government was, and for that reason I held no further communication with him at all, I believe, after sending him that telegram."

A careful examination of Dahlgren's testimony furnishes the strongest proofs of the falseness of his letter. Before he was examined in the subcommittee he had inspected his deposition in the State Department, where it is filed with the other records of the Joint Commission, and he had seen that the original draft or "rough notes" could not have been copied or filled in "on a

clean sheet." So when he came before the subcommittee he testified that his deposition "filled up a number of sheets, and when the chairman asked how many, replied: 'Oh, quite a number; there may have been *a dozen or two dozen sheets*, a large number of sheets;'" and he continued (*ibid.*, p. 647):

> "I then said: 'General Adams, allow me to read over those papers.' He said: 'They are your answers *as written down by my secretary*, and it is long; it is not necessary; have you no confidence in me?' I said: 'I wish to see those papers, and unless I do they can not go out of this room; I must see them.'"

Dahlgren seemed to have forgotten that the "papers" were of no use to Adams, because, at that time, they were neither signed nor sworn to. Dahlgren continues:

> "He then handed me the sheets, and I read them over. I then said: 'General Adams, those are not the answers as I gave them to you, sir, and I will not allow that to pass for evidence.' 'Well,' he said, 'scratch it out or erase it, as you see fit.' That was done, and then I said: 'Now, those answers are satisfactory to me, and I will sign them,' and *I did sign them.* He then said: 'That is not fit to hand in as testimony, all scarred up in that manner.' I said: '*You* had no business to *write those answers* in that way.'"

The witness seemed to have forgotten that his answers had not been taken down by Adams, but by Peña. Dahlgren continued:

> "And I said: 'Well, I am on the way to San Dimas, and I haven't time to stay longer.' I then called to Mr. Sisson, who was consul to Mazatlan while I was United States consul at Durango——
>
> By Mr. FOSTER:
>
> Q. At that time?—A. At that time, yes, sir. I said to Sisson: 'I will sign *a blank sheet of paper*, and put it in your possession as consul, as between

two consuls; you are to transcribe these notes, and retain the original, and hand that signature, with the transcribed sheets ahead of it, to General Adams as my testimony.' Sisson said he would do it. I then jumped on my mule and rode away, 170 miles back to San Dimas."

It will be observed that Dahlgren said that he signed the original deposition, or "rough notes," after his corrections had been made, and, in addition, signed a blank sheet, to be attached to the new copy, which was to be made by Consul Sisson. Next day, his direct examination still continuing, the chairman inquired (*ibid.*, p. 677):

"Q. Did you affix your signature at all after that single blank sheet of paper; *did you sign your name twice?*—A. No, sir; I don't think I did, *because it was in such bad shape that I would not.*"

Dahlgren did not seem to be able to state the same circumstance twice in the same way. He was greatly troubled about his oath—a difficulty which he evidently had not anticipated. When asked whether he was sworn (*ibid.*, p. 647), he said: "I do not recollect, sir; I do not recollect whether there was any formality in swearing me or not." Asked again, after a considerable interval (*ibid.*, p. 650), whether he had any clearer recollection than he had already stated, as to whether he was sworn by the consul, he replied: "I don't recollect as to that." But in certain small particulars, not affecting the sense of his deposition, his memory was most wonderful. He seemed inclined to deny that he had said anything contained in his deposition—the mere fact that it was there seemed to arouse his antagonism. For example, his deposition made him say, "The late Rear-Admiral John A. Dahlgren was my father." In his testimony before the subcommittee (*ibid.*, p. 651), he said, "I never said that. To the question, 'Are you or are you not a son of

the late Admiral Dahlgren, of the United States Navy,' my reply was, '*I am.*'"

An examination of the question in the deposition shows that his consular position, as well as his parentage, was inquired into, and while it might have been properly answered by the words, "I am," instead of the answer contained in the deposition, namely, "Yes; the late Rear-Admiral John A. Dahlgren was my father, and I hold the position suggested in the question, and I am so recognized by said authorities," the two answers mean exactly the same; and it is remarkable that after the lapse of seventeen years Dahlgren could have been so positive that he made the one answer rather than the other.

Recurring again to the question whether he was sworn, Dahlgren said (*ibid.*, p. 677):

> "A. I recollect when I wrote my name. I have seen the document and recognize my name. I handed it to Sisson. I said, 'Consul Sisson, I put this in your charge, to have this transcribed and written—the rough notes;' supposing of course, as a colleague of mine, as one consul for another, that he would act for me. I had just received information that imperatively called me away. It was absolutely necessary to go. I could not delay. It was not my business to tell them that (he had testified previously that he did tell them that). *When I took this to him* he said, 'You swear that this is the truth, the whole truth, and nothing but the truth?' I said, 'I do.'
>
> By Mr. KENNEDY:
>
> Q. Alluding to the blank sheet of paper?—A. Alluding to the testimony I had given.
>
> Q. And you signed a blank sheet of paper and handed it to him?—A. That is it.
>
> * * * * * *
>
> The CHAIRMAN. I will have to take this myself.

Q. You *now* state that you were sworn?—A. Yes; that I was sworn *at first.*

Q. *No; you state that you were sworn.* When the consul that administered that oath to you did so, did he have in his hand or did you have in your hand a paper to which that oath applied?—A. No, sir."

In his cross-examination the same subject was revived. (*Ibid.*, pp. 706, 707.)

"By Mr. WILSON:

Q. Were you sworn on that examination?

By the CHAIRMAN:

Was an oath administered to you?—A. No; that was administered to me *at the beginning.*

Q. Well, was there at the end?—A. I have stated in my examination that when I signed that paper and handed it to Sisson he said, 'Is this the truth, the whole truth, and nothing but the truth?' *holding that blank piece of paper in his hand* which I had requested him to transcribe.

* * * * * * *

I was not sworn *until the examination was over,* and I handed to him that blank sheet of paper, then he said, 'Is this the truth, the whole truth, and nothing but the truth?'

Q. And that is your statement now in regard to it?—A. That is. That is my statement. That is the only swearing that was done in the matter."

Before Dahlgren's testimony is further examined, it may be as well to refer to the testimony of ex-Consul Sisson in regard to the manner in which Dahlgren's deposition was taken. Sisson, who was subpœnaed on behalf of the Company, testified before the committee, on that matter, as follows (*ibid.*, pp. 792, 793):

"By Mr. KENNEDY:

Q. Have you examined the original deposition

of Dahlgren that is now on file in the Department of State?—A. Yes, sir.

Q. When did you first see that document?—A. When did I first see it?

Q. Yes, I mean the 18 pages of which it is now composed?—A. It was made out in my consulate.

Q. Now, will you state the circumstances attending the taking of that deposition? I mean the signing of it by Dahlgren, his oath to its truth, so far as you are concerned?—A. Well, Mr. Dahlgren and Mr. Adams, Mr. Peña, and I think Governor Galan, came up to the consulate for the purpose of making out an affidavit.

By the CHAIRMAN:

Q. Now, do you mean an affidavit, Mr. Sisson, or a deposition?—A. I do not mean an affidavit, I mean a deposition.

Q. In this La Abra case?—A. In this La Abra case. And they sat down in the office there and went to writing.

Q. You say they went to writing. Who went to writing?—A. Mr. Peña did the writing; the interpreter. Adams and Dahlgren were discussing the matter.

By Mr. KENNEDY:

Q. What time of day did these gentlemen whom you have named come to the consulate?—A. Oh, along in the morning sometime. I can not tell exactly what hour they did come.

Q. Well, now, proceed.—A. Well, Mr. Peña went to draw up the paper and they talked it over. I was out and in the room while they were at it, and finally *it was finished* and *all written out.* I went in there then and *swore Mr Dahlgren,* and *it was read over to him.*

Q. You mean this identical deposition?—A. I mean *this identical deposition* that is in the State Department to-day, or was yesterday.

By the CHAIRMAN:

Q. You examined it through, did you?—A. I did.

I swore him—the usual form of oath that was attached there to it—and after it was all through he signed it right there. Mr. Peña witnessed it right there. Then I put my oath to it.

By Mr. KENNEDY:

Q. That is, the certificate?—A. I mean my certificate. Then I signed it and put the seal of office to that. Then I turned it over to *Mr. Danglado*, who put the ribbons through it in the form you see. You see how it is done there, put through and through, brought back, sealing-waxed about the top of it, and he held it up while I put the stamp on that sealing-wax. Mr. Dahlgren, as soon as he signed it, went off."

After reading to Sisson, from the record, Dahlgren's testimony, already quoted, that he had signed a blank sheet of paper, etc., the ex-consul's examination was continued as follows (*ibid.*, p. 794):

"Q. Now, Mr. Sisson, what have you to say to that statement of Dahlgren so far as it concerns you?—A. I can say that *he signed no blank sheet at all* there to my knowledge. *What he signed was this deposition of his.* What he and Adams did and talked about—they talked a great deal—I can not tell, but *this was the result of their work*, was the making his deposition there.

Q. Now I read again to you:

By the CHAIRMAN:

Q. There is one part of that you have not answered. He states there that he makes some declarations to you. What do you say about this?

By Mr. KENNEDY:

Q. I will read that again to him:

'I will sign a blank sheet of paper and put it in your possession as consul, as between two consuls; you are to transcribe these notes and retain the original, and hand that signature with the tran-

scribed sheets ahead of it to General Adams as my testimony. Sisson said he would do it.'

Now, you have just said that Dahlgren never signed any blank sheet of paper in your consulate to your knowledge, and the chairman invites your attention to what Dahlgren says he said to you about transcribing the notes and your promise to do that. Is that true?—A. No, sir; I don't recollect any such thing.

By the CHAIRMAN:

Q. No, but do you deny it?—A. *I do deny it;* yes, sir.

Q. You say it is not true?—A. *I do.*

* * * * * *

No affidavit was ever taken there unless it was written out in full as a deposition.

By the CHAIRMAN (*ibid.*, p. 795):

Q. Is that your reason for saying that Dahlgren has made a false statement, that you never do business in that way, or do you state it as your recollection in connection with this particular paper?—A. *I state that as a recollection.*

Q. In connection with this particular paper?—A. *Yes.*

Q. That he did not sign a blank sheet at all, but *signed the deposition after it had been filled out, and only after it had been filled out?*—A. *That is what I say.*

* * * * * *

By the CHAIRMAN:

Q. Wait one moment; I wish to ask him a question. This document that you saw in the State Department was drawn up, you say, in Peña's handwriting?—A. Yes.

Q. Was that read over to Dahlgren in your presence?—A. Yes.

Q. Who read it to him?—A. Peña, I think, and I think I read some of it myself.

* * * * * *

By Mr. KENNEDY (*ibid.*, p. 799):

Q. You say that every word of the deposition that is now in the State Department was read to the witness in your presence before he signed it?—A. That is what I intend to say."

The consular clerk corroborates Sisson.

It will have been noticed that Sisson said that Dahlgren's deposition immediately after he signed it had been turned over to Mr. Danglada who put the ribbons through it and held it up while the consul put the stamp on the sealing-wax. Sisson had previously testified that his consular clerk was Domingo Danglada, a Mexican, who spoke Spanish, English, and French. After Dahlgren had been examined by the subcommittee, counsel for the Company made inquiries in San Francisco for Peña—the man who read Dahlgren's deposition to him and subscribed it as witness—in order to have him subpœnaed, but found that he was dead. It was discovered, however, that Danglada was still living at Mazatlan, and when the Company's counsel requested that he should be subpœnaed (agreeing to bring him to the boundary line between the two countries), the following telegraphic correspondence was admitted in evidence by consent in lieu of his personal appearance (*ibid.*, p. 938):

"Mr. FOSTER. Before you adjourn we will answer the opposition that we reluctantly, and in order to avoid any excuse for further delay in this investigation, will admit that Danglada, if present, would swear to this statement contained in the telegram.

The CHAIRMAN. I will read it. Shellabarger & Wilson, counsel of La Abra Silver Mining Company, sent a dispatch addressed to Domingo Danglada, at Mazatlan, Mexico, dated February 21, 1889, at Washington, D. C., as follows:

'Dahlgren swears he did not sign his deposition

taken September, 1872, before Sisson, about La Abra claim, but signed a blank sheet of paper. Sisson swears that Dahlgren signed said deposition when fully written out, and that it was read to Dahlgren by Peña in your presence, and you tied it up. Which is the truth? Wire at our expense.

SHELLABARGER & WILSON.

'Via Galveston, February 23, 1889, dated Mazatlan, 23.'

'SHELLABARGER, R. J. WILSON, *Wash'n, D. C.:*

Sisson is correct. Dahlgren signed deposition when fully written out.

D. DANGLADA.'

It is admitted by the counsel for Mexico that if D. Danglada were here he would swear that he received the telegram above copied, and made the answer above copied, and would swear that—

'*Sisson is correct. Dahlgren signed deposition when fully written out.*'

Dahlgren's disposition to repudiate everything in his deposition has already been noticed. Although he had sworn that the original draught or "rough notes" comprised a "dozen or two dozen sheets" and that the examination was prolonged and tedious, he scarcely left enough of his deposition in his testimony before the subcommittee to fill a single sheet. He tried to dispute even the most trivial things in his deposition. One illustration of this has already been given; another is furnished below, which also shows his shiftiness, his readiness to swear to two conflicting facts (*ibid.*, p. 704):

"Q. You have testified as one of the evidences that this is not your deposition——A. Yes.

Q. Hold on a minute now—that you did not say your family was going to *New York* as recorded in this deposition; that you said your family was going to San Francisco. Now, I want you to say whether,

in the light of what you have just stated, you can swear that you did not say that your family was going to New York as it is recorded in this deposition?—A. I have told you that I did not attach any importance. I said they were going to San Francisco. I did not say where else they were going.

Q. I beg your pardon—— A. Well, that is what I say now.

Q. Well, I am not talking about what you are saying.—A. It is an immaterial question.

By the CHAIRMAN:

Q. No, it is not immaterial. It is what you said then. Did you say to that man who took down your deposition that your family were going to New York or going to San Francisco?—A. Well, after an interval of eighteen years, about, *I don't know what I did say*, only that I was going to send them to San Francisco *first*.

The CHAIRMAN. Well, that ought to be satisfactory.

By Mr. WILSON:

Q. No; one moment further. You have sworn here before the committee, and pointed out as one of the evidences that this deposition is not correct, that they recorded it here that you said that your family was going to New York.—A. Well, I did say San Francisco to General Adams.

Q. Now you swear to that? A. Yes; *I swear to that now.*"

Being asked how he happened to sign that sheet of paper half-way up, he said (*ibid.*, p. 700):

"*I do not know that.*

Q. Why not at the bottom as well as half-way up the sheet?—A. *That never occurred to me.*"

But a reason occurring to him just then why it might be prudent to sign a blank sheet for such a purpose near the middle, he continued as follows, without a break:

"I signed it right there in the middle of the sheet

or wherever it is. I do not think I have seen that paper since I put my name on it. *I will tell why I did that.* I did so thinking that upon this they could put in the certificate of the consul. I knew that something was to be added to it, and signed it up so as to give them room."

He testified in his original deposition that in 1871 he removed certain parts of machinery, which the company had abandoned at Tayoltita, to San Dimas, and used them in the mill belonging to the Durango Company, of which he was superintendent; and in his deposition he claimed to have done this with the sanction of the court. (*Ibid.*, pp. 402, 403). In his testimony before the subcommittee (*ibid.*, p. 685) he said that the judge declined to give him permission to take these pieces, and that Granger told him (*ibid.*, p. 689) that if the judge would not allow him to take the machinery it would be all right—he (Granger) would allow him, and under that promise he (Dalghren) took the machinery.

Further examined in regard to this appropriation of property that did not belong to him, he testified (*ibid.*, p. 709):

"Q. You had taken a part of this La Abra Company property from that place?—A. Yes, I had.

Q. Will you tell us the property you took away?—A. I took a water-wheel 24 feet in diameter, and, I think, 6 feet breast.

Q. What else did you take away?—A. I took some retorts.

Q. How many?—A. Two.

Q. What else did you take away?—I took all such machinery as I needed. I can not recollect the pieces, but I took everything I needed to complete my mill at San Dimas.

Q. In other words, *you dismantled this mill for the purpose of building up your own?*—A. *I did.*

Q. From whom did you buy that?—A. Santiago Granger."

He was further examined on this transaction (*ibid.*, p. 733):

"Q. From whom did you purchase this La Abra property that you took away from there?—A. *I took it.*

Q. Just went and took it?—A. I took it; yes.

Q. Did not buy it from anybody?—A. *I paid no money for it,* sir.

Q. By what authority did you take it?—A. I applied to Judge Quiros for permission to take it, and he denied me, and Granger said: 'If he does deny you, I will allow you to go over and take it;' and I did go over and take it; and that is what I did.

Q. You just went there and carried away property that did not belong to you?—A. No, sir; I had permission from Granger to do it.

Q. Where was Granger at the time?—A. *In my employ as bookkeeper.*"

At this juncture, for some reason, Dahlgren thought it was important to conceal the fact that Granger had been in the employment of the Durango Company at San Dimas prior to Dahlgren's arrival at that place. It had been developed that Dahlgren had been dealing with a man in his own employ for property which that man did not own, and that under a pretended permission from him, and without paying him or anybody anything for it, and notwithstanding the refusal of the judge to sanction his proceeding, Dahlgren had plundered the works. Granger claimed that he had been left in charge of the property by Exall in March, 1868, but he had left Tayoltita and entered the employ of Ralph Martin, Dahlgren's predecessor at San Dimas, as bookkeeper. But Dahlgren did not want it to appear that when he arrived at San Dimas, in July, 1870, Granger was already bookkeeper for the Durango Company. And in his cross-examination, having forgotten what he had previously

said on this point, he dodged and prevaricated, as follows:

"By Mr. WILSON:

Q. You found him at San Dimas when you went there?—A. Yes.

Q. And do you know in whose employ he was when you went there?—A. I only know from hearsay.

Q. Well, was he in the employ of your Company?—A. *I do not know.*

Q. Was he at work in the office of your Company?—A. *I could not tell that.*

Q. When you went there?—A. When I went there I found him there.

Q. What was he doing?—A. *I do not know.*

Q. Was he keeping the books of the Durango Company?—A. *No, sir; not that I know.*

Q. Well, what was he doing?—A. *I told you I did not know.*

Q. Well, how soon did you take him into your employ? You found him there?—A. Immediately upon my arrival.

Q. Did you change his employment in any way?—A. *No, sir; I did not.* It was *over three months after I was there* that I took him in my employ.

Q. Well, he was there working for the Durango Company, was not he?—A. *I do not know.*

Q. Who was keeping the books of the Company when you went there?—A. *I could not say that; I did not know.*

Q. Well, who kept the books of the Company during the first three months after you went there?—A. *Ralph Martin.* I was there three months with my predecessor before he left.

Q. And Ralph Martin was your predecessor?—A. Yes.

Q. And who kept the books for Ralph Martin?—A. *He kept his own books* and *I kept my own books.* We started in to wind up the business. It took him three months to wind up, and I started in with my own expenditures.

Q. Well, I want to know whether Granger was doing anything for that Company when he went there?—A. *I do not know; I tell you most distinctly.*

Q. Did you see him there?—A. I did see him there.

Q. Was he about the hacienda all the time?—A. No, sir.

Q. Where was he?—A. Sometimes in town; sometimes in Tayoltita. When he was out of the hacienda I did not know where he was.

Q. But after you had been there three months you put him in as bookkeeper.—A. *Yes; I took him in.*

Q. And after he had been in your employ about a year, when Quiros had refused you the right to take that property, you got your authority from your employee, Granger, and you went over and carried it away?—A. Yes.

Q. And that is the way you got possession of it?—A. Yes."

Now, it will scarcely be credited after reading the foregoing that the following is to be found in Dahlgren's direct examinaton (*ibid.*, 679):

"When did you first become acquainted with James Granger?—A. When I first reached San Dimas in July, 1870.

Q. What was Granger's occupation at that time?—A. *He had been bookkeeper for my predecessor, Ralph Martin, and I retained him in that position during the five years and two months that I was there.*"

A more complete contradiction of all his prevarications on that point could scarcely be put into a shorter sentence.

In his motion before the Umpire for a new hearing, Señor Avila, the Mexican agent in attendance upon the Joint Commission, alluded to Dahlgren's conduct, as disclosed in his deposition, in stripping the mill at Tay-

oltita, as follows (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 94):

> "Deponent says that in the enterprise of which he is superintendent, the only American one that has escaped the fury of the Mexican authorities, he availed himself of the opportunity by purchasing a part of the property at mere nominal prices from private individuals, in the acquisition of which he was sustained by the judge of the first instance of San Dimas, according to a contract.
>
> Here, then, we have the son of an admiral and (himself) consul taking advantage of robberies, but sustaining the claim to which robbers serve as a cover. If a person who acts in this manner is a reputable witness, the undersigned must then candidly confess that he does not understand the meaning of the word."

What Señor Avila would have said of Dahlgren's conduct if, instead of claiming, as he did in his deposition, that he was authorized by the court to take the machinery, he had testified, as he did before the subcommittee, that he took it notwithstanding the refusal of the court to grant him permission, can readily be imagined.

Before the subcommittee, Dahlgren denied that he had said in his deposition, in answer to the question how his Company could remain at San Dimas without disturbance, that they had had disturbances, and difficulties, and had been obliged to submit to all exactions, whether lawful or unlawful, but had found out how to manage and *interest them*, otherwise they would have been compelled to leave like the others without a doubt. That Dahlgren did make such a statement in his deposition and that it was true is made probable by the testimony of his predecessor as superintendent of the Company's mines at San Dimas, Ralph Martin, an unimpeached witness, whose deposition on behalf of the Company was taken in New York before United States

Commissioner Stilwell in June, 1874. On this point Mr. Martin said (Appendix, p. 470):

> "There was in reality, no protection given to foreigners in the country, and I never knew any effort to be made by the authorities there to extend protection to *Americans who were at variance with Mexicans*, excepting only in cases *where the profits of the mining enterprise were shared by said authorities.*"

Many more instances of Dahlgren's untrustworthiness could be cited from his testimony before the subcommittee, but another must suffice. It was claimed by counsel for the Mexican government that certain statements contained in Dahlgren's deposition could not have been made by him, because the facts stated were not within his knowledge; for example, that when he was examined at Mazatlan, on the 18th of September, 1872, he did not know the names of the Company's mines, and therefore could not have mentioned them. When Mr. Foster was examining Dahlgren upon the questions and answers in his deposition seriatim, his attention was drawn to the fourth question and answer, reading as follows (*ibid.*, p. 651):

> "Question 4th. Where are said mines and property situated, and of what did said improvements of claimant consist, and in what condition are they now?
>
> Ans. The principal mines of 'La Abra Silver Mining Company' are in 'La Abra' Mountain, near Tayoltita, in said district of San Dimas. Their names are 'El Rosario,' 'El Cristo,' 'La Abra,' 'La Talpa,' 'El Arrayan,' 'El Sauce,' and some others in that district whose names I have forgotten."

Then his examination was thus continued:

> "Q. Is that a correct answer to the question as you gave it?—A. No, sir; *because* I didn't know *what mines* they possessed.

Q. Did you ever know, *by name*, the mines whose names are here given? Did you ever know whether or not they belonged to La Abra Company?—A. No, sir; I knew that La Abra mine belonged to the Company. I had been at El Arrayan, but I didn't know the names of the rest of the mines belonging to the Company.

Q. And you did not attempt to give the names in that examination?—A. No, sir; nor their condition."

But subsequently, in his reply to a question whether he had testified, in his deposition, "to anything as to the denouncement of the Rosario mine by Granger" (*ibid.*, p. 653), he replied: "*I believe I did.*" That made three of the Company's mines whose names he knew prior to his examination at Mazatlan—"La Abra," "Arrayan," and "Rosario." Further on, his attention was again directed to the names and value of the Company's mines, as stated in his deposition, "more particularly to 'La Abra,' 'El Rosario,' 'La Talpa,' and 'El Cristo' veins, and to a remark of his in his said deposition that he 'should like to own them, and, if it were possible, to raise capital to work them.'" Whereupon, forgetting that he had said a short time before that he did not know their names, he replied that *he could have owned them if he had wanted to*, and that he had the means to work them, and then, to show how familiar he was with the Company's mines, and in what a practical manner, he added (*ibid.*, p. 659):

"Some people *repeatedly* asked me to go over there and *take hold of those mines*, but I always declined.

Q. Why did you decline?—A. Because I sent over my right-hand man to look over the district, and if there was anything good to secure it.

* * * * * *

My rule always is to send out my right-hand man to look at a property first, and then if he reports

favorably on it, I go myself and look at it, and if it is good I take it."

But without this evidence that he had received a report on the Company's mines, there would be a strong probability supporting his deposition that he knew their names, and, in a general way, their location and characteristics; for during more than two years prior to his examination at Mazatlan he had been associated intimately with James Granger, who knew all about the mines, and General Adams had been his guest at San Dimas, and had there made examinations of witnesses preliminary to taking their depositions in court. And Dahlgren testified that he "heard the case talked of *pro* and *con* in his hacienda" (*ibid.*, p. 670):

"We would sit there of an evening and talk of it."

He had been at San Dimas over two years, and his "right-hand man" had made a report on the Company's mines before he made his deposition at Mazatlan in September, 1872.

Besides, in referring to his book on the "Historic Mines of Mexico," in which the Company's mines, "La Abra," "Rosario," "La Luz," and "El Cristo," are mentioned, he said to the subcommittee (*ibid.*, p., 687):

"I have always kept carefully a mining diary, and *as I got information about mines* I placed it down, tabulated it, and kept it. *During the five years I was in Mexico I did that*, and finally I got such a mass of data I put it into shape."

It is also to be remarked that in speaking of his frequent visits to the company's hacienda in October, November, and December of 1871, when he was helping himself to the machinery, he said (*ibid.*, p. 685) that nobody at that time was occupying the Company's mines. In the earlier part of his examination before

the subcommittee (*ibid.*, top of p. 652) he said that he did not know "anything whatever of the mines that La Abra Company abandoned"—alluding to the time when he made his deposition at Mazatlan—but it afterwards appeared, as already observed, from a memorandum in his note-book that two months before he was examined at Mazatlan he had made a personal examination of "El Arrayan." It also appeared that he knew his book-keeper had denounced "El Rosario," and that he (Dahlgren) was intimate with Francisco Torres (*ibid.*, p. 686), who worked that mine and "La Luz" in partnership with Granger in 1870 or 1871.

The testimony of ex-Consul Sisson or Domingo Danglada was not necessary to prove that Dahlgren committed perjury in maintaining, as he did before the subcommittee, the truth of his letter to Lines in regard to the manner in which his deposition was taken at Mazatlan. It does not appear that his deposition could ever have been of much importance in the case, so far as the award was concerned, for he did not arrive at San Dimas until July, 1870, more than two years after La Abra Company had abandoned its property, and the great bulk of his deposition was hearsay. It is true that he vouched again and again in the strongest terms for the honesty, intelligence, courage, and truthfulness of his Mexican "mozo," Avalos, whose three depositions—two taken on behalf of the Company, and one alleged to have been taken by a Mexican judge in court on behalf of the Mexican Government—are printed in the appendix, and have been already noticed in this report. But Dahlgren's deposition takes its chief importance from the fact that he denied having made it in the form in which it was submitted to the Joint Commission, and that his denial, coupled with his aspersion upon General Adams, was made so prominent in the so-called "new

evidence offered by Mexico" so early in the efforts of that Government, through General Slaughter and his subagents, to impeach the award.

The testimony of ex-Consul Sisson and of Domingo Danglada, with Dahlgren's own contradictions and inconsistencies, have destroyed his credibility and relieved General Adams and the Company from any discredit or stigma cast upon them by Dahlgren's letter. That Dahlgren's letter was injurious to General Adams, and, reflexively, to the Company, is beyond dispute; for in an earlier report by Mr. Edmunds for Mr. Morgan, from the Committee on Foreign Relations (July 7, 1886), it is said that the evidence submitted by the Mexican Government in the document entitled "Claims against Mexico" shows "that some of the testimony offered by the Company to establish its claim before the Commission was *forged* by its agent and attorney, Adams.* The reference in that report is to Dahlgren's letter; which was printed therein with the following caption in italics: "*Letter from C. B. Dahlgren to Mr. Robert B. Lines, stating that his deposition in favor of La Abra Silver Mining Company has been forged.*" This charge will now have to be withdrawn with the other charges falsely accusing General Adams of having been short in his accounts as captain and assistant commissary at the close of the Mexican war, and of having been thrice court-martialed, (and, inferentially, disgraced) during his service in the United States Army in the war for the Union.

One of the most remarkable and satisfactory features of the recent investigation was the formal withdrawal of the charges against General Adams, affecting his military record, by one of the counsel for the Mexican Gov-

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* Report 1454 and Views of the Minority, Sen., 49th Congress, 1st Sess., 4.

ernment (Mr. Lines) in the course of his cross-examination. The official documents showing the falsity of the charges reflecting on the personal integrity of General Adams were received in evidence and are printed, with the testimony of Mr. Lines on the subject, on pages 931–934 of the appendix.

It seems to the undersigned that the testimony taken before the sub-committee, instead of impeaching the award, has shown the strong foundations upon which it rests and has justified the wisdom and equity of the Umpire.

APPENDIX IV.

Mr. Lines' negotiations with Mr. Elder.

[From Report No. 2705, Part 2—Views of Minority—50th Cong., 2d Sess, pp. 49–54.]

The references are to the appendix of the majority report in which the testimony is printed. Mr. Elder was examined by the Senate subcommittee January 29, 30, 31, and February 1, 1889, and Mr. Lines February 21, 1889.

Mr. Lines at this time was also negotiating with another former employé of the Company, Mr. A. B. Elder, for documents which he claimed were in his possession, and Mr. Elder had sent a letter which he had received from Mr. Lines to General Bartholow, who, it will be remembered, was one of the Company's stockholders, and its first superintendent at the mines. In this letter, which is dated at Washington, January 17, 1878, Mr. Lines alluded to the negotiations which he was conducting, through the detective Fisher, with Exall in New York, as follows (*ibid.*, p. 635):

> "Exall is in New York. I have not his address, but my agents are in communication with him, and he shows, as I am informed, a disposition to purge himself of the false swearing into which he was undoubtedly led by older rascals."

The expression—"to purge himself"—used by Mr. Lines at the time, shows that he and his principals—General Slaughter and the Mexican Minister—were trying to induce Exall to "unswear" what he had sworn to in his depositions on behalf of the Company before the Joint Commission, and swear to a different state of facts. In his own testimony and in his examination of Mr.

Elder, Mr. Lines was careful to discriminate between documentary evidence, which he admitted he would have advised the Mexican Government to purchase, if of the kind desired, and one's own affidavit, which he held could not properly be purchased. He also said that when he wrote to Elder that Exall was showing a disposition "to purge himself," he did not use the expression in its technical sense. But Mr. Lines' unstudied statement in his contemporaneous letter to Elder, taken in connection with Mr. Kittelle's positive testimony on this point (*ibid.*, pp. 768, 772, 773), and the probabilities indicated by the situation, would show conclusively that it was new testimony from Exall himself, under oath, as well as any books or papers of the desired character he might possess, that the Mexican Government, by its agents, was trying to obtain. On this point Mr. Lines testified as follows (*ibid.*, p. 928):

> "Q. Now, you go on to say, referring to Exall: 'And he shows, as I am informed, a disposition to *purge himself* of the false swearing into which he was undoubtedly led by older rascals.' Who was it that gave you that information?—A. Mr. Fisher. He informed me that Exall claimed to have papers, documents, and to be willing to furnish them.
>
> Q. No; but you say that 'he shows a disposition *to purge himself* of the false swearing.' What did you mean by that?—A. Well, I did not use that in the technical sense. I was not corresponding with a lawyer, and I meant merely that Exall showed a disposition, as I was informed, to furnish testimony which would show the truth of the matter.
>
> Q. Well, do I understand you that if a man *who had sworn falsely was willing to sell documents in his possession for a good round price* that you would call that *purging himself?*—A. I would not call it so in a conversation between you and me, but in a letter of this kind I might do so. That was all I meant, at least, by the expression."

But Mr. Elder, who was produced before the subcommittee as a witness on behalf of the Mexican Government, had written to General Bartholow, inclosing an alleged "verbatim" copy of a portion of another letter received by him from Mr. Lines, which reads as follows (*ibid.*, p. 636):

[Copy of a letter from R. B. Lines to A. B. Elder, copied by A. B. Elder.]

"WASHINGTON, D. C., *February* 17, 1878.

Verbatim.]

Your evidence, backed by these memoranda in view of your position, ought certainly to be conclusive. Sundell said in Sept. the ores were all there. The lobby in behalf of the Co. finding itself unable to suppress investigation is now trying delay it with more success. Just when it will commence is still uncertain. Let me know what you will furnish the memoranda *sworn to* by you and Exall letter for.

Exall is in N. Y. and I think in a few days we shall have his papers. My agents are in communication with him in N. Y., and he is weakening very rapidly. I shall be glad to forward to him anything you may offer. I do not know his address, as everything is done through my agents.

There is much in the letter not in this.

[In pencil:] R. B. LINES.

Yours, A. B. ELDER.

I have an offer to go to China. Silver mines there. Do you want any stock in the Co.? The prospects are good. May be so; dividends."

It is only fair to Mr. Lines to say that in his testimony before the subcommittee he said (*ibid.*, p. 930):

"These words '*sworn to by you*,' I am very positive, were not in any letter I ever wrote to Mr. Elder."

In one of his own letters to General Bartholow, Elder states plainly what the Mexican authorities wanted from him and what they had offered him for it. He

had fixed the price at $10,000, and the following was evidently intended to draw out a bid of something over $8,500 for his wares (*ibid.*, p. 639):

"LONE PINE, CAL., *April* 5, 1878.

General BARTHOLOW:

DEAR SIR: Yours of the 24th ult. come duly to to hand and contents noted. I sent to you a few days since a postoral card asking the return of Mr. Lines' letter. If you have not already started it you need not be in a hurry about doing so. In a letter from Washington a few days since they, through an agent, have offered $1,500 *less than I asked* them; *they want my deposition* and the letter and memoranda, and I think I will accept, as I have been losing in the sheep business for the last year.

As for the Co. for China, it is not perfected yet. I will let you know more of it soon.

Hoping, yours truly,

A. B. ELDER."

Elder's letters to Mr. Lines had been printed in the "New evidence offered by Mexico" with certain insinuations and charges against the Company, the falsity of which was shown by Mr. Elder's cross-examination before the subcommittee, as follows (*ibid.*, p. 593):

"Q. Now, I wish to direct the attention of the witness to the statement of the Mexican Government on page 428 of Ex. Doc. 103, under the title of 'New evidence offered by Mexico.' I will read you a sentence or two:

'Herewith are transmitted the originals of certain letters addressed by A. B. Elder, the assayer for La Abra Company, to the Mexican minister and Mr. Robert B. Lines. Mr. Elder desired to find a market for the knowledge which he possessed of the affairs of La Abra Company. He was informed that if he had any documents, clearly authentic, bearing upon the case, *there might be room for a negotiation*, but that affidavits were not regarded

as purchasable. Mr. Elder claimed to have such papers, and was asked to produce them and name his price. This, as his letters show, he failed to do, and the correspondence with him was dropped. He appears, however,— And this is the point to which I invite your careful attention— He appears, however, to have *found a market* for the letters addressed to him in reply by Mr. Lines? Now, I want to ask you whether it is a fact that you ever found any market anywhere for the letters addressed to you by Mr. Lines?—A. *Never in the world, sir.*

Q. Is there the slightest foundation in fact for the assertion of the Mexican Government which I have just read to you? Did you ever offer any of Mr. Lines' letters for sale to anybody?—A. *Never.*

Q. Did you ever receive anything for any of Mr. Lines' letters from anybody?—A. *Not one cent.*

Q. Did anybody ever offer to pay you one cent for any of Mr. Lines' letters?—A. *Never.*"

Elder not only contradicted thus explicitly the intimation in Mexico's "New evidence" that he had found a market for the letters addressed to him by Mr. Lines, but he also testified to the falseness of the charge which the Mexican Government had made against the Company, as follows (*ibid.*, p. 595):

"Q. Now I invite your attention to another sentence in your letter of April 8, 1878, to Mr. Lines: 'Through some party, to me unknown, I am offered a good show to go to China to look after a silver mining company's affairs.' I ask you who it was that made you that offer?—A. Well, I don't know who it was that made me that offer.

Q. I ask you whether you have any reason to suppose that it was made to you by any officer, or other party interested in La Abra Company?—A. *I have no reason to believe so.* Such propositions were often made to me.

Q. It was nothing uncommon?—A. Nothing uncommon.

Q. You had been mining how long?—A. Ever since 1853.

Q. Now, I want to invite your attention to the statement made by the Mexican Government in regard to that China business, on page 430 of that same document, No. 103, under the title of 'New evidence offered by Mexico.' I now read to you, Mr. Elder:

'*Either Mr. Elder has exhausted La Abra treasury*, or else the persons conducting the affairs of that Company have *swindled* him, as *they did their other witnesses*, by failing to carry out *their contract and send him to China.*'

Now, I ask you whether there is the slightest foundation in fact for the allegation that you had any contract with any officer of La Abra Company, or with the Company itself, to go to China, or for the allegation that they swindled you by not sending you there?—A. *None whatever.*

Q. Can you think of any reason for such a statement being made?—A. *I can not imagine any. I certainly never received any such proposition from any member of La Abra Company.*"

It will have been observed that the "offer to go to China" was communicated by Elder in his letter of February 17, 1878, to General Bartholow (*supra*), and not by General Bartholow to Elder. It is certainly quite a remarkable feature of this recent investigation by the subcommittee that one of the most serious charges made against the Company by the Mexican Government in its formal presentation of its case to Congress and the Department of State, should be proved false by one of its own witnesses, and that witness of all men necessarily best informed as to the fact.

It seems clear that if Elder's memorandum book had really contained what he said it did, he would have sworn to its correctness and sold it to the Mexican Gov-

ernment, but he never produced it, or any other papers, although he received the following considerate assurance from Mr. Lines (*ibid.*, p. 635):

> "You may rest assured that there is no disposition to take advantage of your voluntary offers or to use your information, which is of unquestionable value, to your prejudice."

Elder failed in his efforts to use Mr. Lines' letters as an inducement to General Bartholow or La Abra Company to enter into competition with the Mexican Government for what he had to sell, and he had shown himself so evidently purchasable, or Mr. Lines was so sure that he had nothing worth buying, that in preparing the statement of the "new evidence offered by Mexico," Mr. Lines dismissed him, but, nevertheless, printed his letters and availed himself of the occasion to make a charge of the most infamous conduct on the part of La Abra Company, which, according to the Mexican Government's own showing before the subcommittee, was without any foundation or color of excuse.

After a lapse of ten years, the Mexican Government seems to have thought that something could still be made out of Elder, and he seems to have thought that something could still be made out of the Mexican Government. He was subpœnaed on behalf of the Mexican Government by the subcommittee on the 14th of January, 1889, in a telegram from the Sergeant-at-Arms, informing him that he would be allowed mileage at the rate of 5 cents per mile each way and $3 per day while detained in Washington. (*Ibid.*, p. 622.) He responded immediately:

> "I must see money, and *more than you offer*, before I leave home."

The Sergeant-at-Arms replied:

> "You will be allowed [no] more than the law allows, and the United States Senate commands you to come."

To which Elder responded:

> "I am *not of the kind* that works for $3 per day, nor will I leave here without money to pay all expenses liberally, and I will come near *having something to say about it.*"

This was January 16. The same day he telegraphed again:

> "Send $500. Will leave on 20."

Elder seems to have been in some confusion of mind, for he testified, on cross-examination, in explanation of his telegrams, that he did not know which side had subpœnaed him, and that before reporting to the Sergeant-at-Arms he went to see the Company's counsel in Washington. He thought that perhaps it was the Company that wanted him.

As a sample of the manner in which Mexico would impeach Sir Edward Thornton's award in this case, if the Senate bill under consideration should pass, and the Court of Claims should take jurisdiction, some extracts from Elder's cross-examination are appended (*ibid.*, p. 625):*

> "Q. Did you report to the Sergeant-at-Arms when you arrived in Washington?—A. I did not.
>
> Q. How long were you in Washington before you reported to the Sergeant-at-Arms?—A. I got in Friday, after 9 o'clock.

---

*Elder was one of the witnesses by whom the Attorney General promised, in the XVIth paragraph of the bill, to prove "that the material allegations of the said memorial and the material testimony submitted by said defendant Company in support of said claim are false." (*Record*, 16.) But Elder was not produced in this suit, nor the failure to produce him explained.

Q. When did you report to the Sergeant-at-Arms? —A. Monday morning. I was sick *Saturday and Sunday; did not get out of the hotel.*

Q. What day was it that you were at Judge Shellabarger's office?—A. *That was Saturday morning.*

Q. Now, will you swear that you did not say to me, in the presence of another person sitting in the same room, that you had put a value of $10,000, during the time that you were corresponding with Mr. Lines, upon the memoranda and the letter mentioned in that correspondence?—A. I believe I said so to you, and I consider that if the memoranda was worth anything it was worth that to a party——

Q. Why did you come to Judge Shellabarger's office before you reported to the Sergeant-at-Arms? —A. I supposed from that telegram that La Abra Company caused my being summoned here.

Q. Did you not have at that time *a letter in your pocket dated December 28, 1888, from the consul-general of Mexico at San Francisco, informing you that your presence was required here as a witness?*—A. *I did.*

Q. Did not you show that letter to Mr. Kennedy in the conversation that took place at Judge Shellabarger's office?—A. In your office?

Q. Well, it was my office; put it that way.—A. Judge Shellabarger referred me to you. I supposed from the nature of the telegram that it was——

Q. The question is, did not you show to Mr. Kennedy in his office the letter now in evidence addressed by the consul-general of Mexico at San Francisco to you, dated December 28, 1888, informing you, substantially, that your presence would be required here as a witness in this La Abra investigation?—A. I presume I did."

Following is the letter from the Mexican consul-general at San Francisco, which, it will be observed, is dated about three weeks earlier than the subcommittee's subpœna (*ibid.*, p. 573):

[Correspondentia Particular Del Consul-General De Mexico. Alejandro K. Coney, 604 Clay Street, San Francisco, Cal.

DECEMBER 28, 1888.

"DEAR SIR: It being necessary, in the interest of justice, that your testimony be heard by the committee of Congress in the matter of the 'Abra' claim, your expenses to Washington and back will be paid, as also during your stay at the capital. Will you kindly answer at your earliest convenience, and oblige,

Yours, very truly, A. K. CONEY.

Mr. A. B. ELDER,
Santa Clara."

Some light is thrown upon Elder's motives and expectations in the subjoined passage from his cross-examination (*ibid.*, pp. 624, 625):

"The CHAIRMAN. Well, proceed, Mr. Kennedy, if you please, to lay your predicate.

By Mr. KENNEDY:

Q. I want to ask you, if you please, Mr. Elder, whether on or about the 19th day of January——

Mr. FOSTER. The present month.

By Mr. KENNEDY:

Q. Whether on or about the 19th day of January, 1889, while you were crossing the bay in California on a ferry-boat you met a man by the name of Alexander S. Gillespie, or any man at all, to whom you said that you had been subpœnaed to Washington City to testify in reference to some old claim between American capitalists and the Mexican Government; that you were an assayer of minerals, etc.; that the claim was about some mines in Mexico; and whether you further stated that the Mexican Government had promised you $50,000 if you would give evidence favorable to them. Also, whether you said that unless the other party gave you more money you would likely give the kind of evidence required?—A. I met a man on the ferry and we

were talking. He said he was a blacksmith; said he had been here, and I told him. He asked me which way I was traveling, and he had been to San José hunting a job as a blacksmith. I told him I was coming to Washington, and I said I had been summoned there by telegraph of the Sergeant-at-Arms of the United States Senate in an award claim of some citizens of the United States against the Mexican Government. He remarked, 'Is there much money depending?' I said, 'Yes, I think there is nearly $1,000,000.' 'Well,' he says, 'they ought to pay you well to go on such a trip as that.' Now, as to my saying that the Mexican Government had offered me $50,000, that I never said. There was talk that they *ought* to pay me for a trip of that kind. I said, '*I presume they will pay me.* I don't know, but the Sergeant-at-Arms says I will get 5 cents a mile. It will be almost like riding on the boom to get there and back.' I says, 'If anybody gives me anything *it will be voluntarily.*' I says, 'I can not demand anything for my evidence.' What I know is simply what I knew at the mill, and the thought of getting any stipulated amount has never entered my head.

Q. Did you say anything about the other party?—A. La Abra?

Q. The Company?—A. Not a word that I recollect of; not one word."

The letter referred to in the foregoing extract had been received by Mr. Sherman, chairman of the Committee on Foreign Relations, and handed to Mr. Morgan, chairman of the subcommittee. The letter is herewith appended, with the agreement of counsel in regard to it (*ibid.*, pp. 687, 688):

"The CHAIRMAN. It is agreed by counsel that if Alex. S. Gillespie were present and under oath, he would make the statement in regard to the conversation with A. B. Elder, which is contained in the following letter, and the presence of Gillespie is by agreement dispensed with.

The letter is as follows:

'OAKLAND, CAL., *January* 19, 1889.

To the honorable Chairman Committee on
Foreign Relations, Washington, D. C.:

To-day while crossing the bay here on ferry-boat I met a man who said he had been subpœnaed to Washington City to testify in reference to some old claim between American capitalists and the Mexican Government; that he was an assayer of minerals, etc., and the claim was about some mines in Mexico; and stated further that the Mexican Government had promised him $50,000 if he would give evidence favorable to them; he also said that unless the other party gave him more money that he would likely give the kind of evidence required. He lives at San José, Cal., and will be in Washington about January 26. He is paying his own expenses to Washington for the present, and expects to have a private interview with Señor Romero, the Mexican minister, as soon as he arrives in Washington. Perhaps this may be of service to your committee, as he said both sides subpœnaed him.

Hon. G. R. Tingle (chief seal island agent, Alaska), at present in Washington, D. C., knows me and you can refer to him about trustworthiness.

Respectfully,

ALEX. S. GILLESPIE,
752 Brush street, Oakland, Cal.'"

APPENDIX V.

Mexico's Charges Against General Adams.

[From Mr. Lines' examination by the Senate subcommittee, February 21, 1889, Rep. No. 2705 Sen., 50th Cong., 2d Sess., pp. 931-933.]

"Q. Now, I think you have stated that you are the author of that double-column presentation of Mexico's case?—A. I think so, almost alone. I don't remember that I had any collaborator in it other than clerical assistance.

"Q. I would like to ask you whether, if you are the author of the remarks derogatory to the military record of General Alonzo W. Adams in connection with courts-martial which are referred to in that statement, you had read the records of these courts-martial at the time that you made those aspersions upon General Adams?—A. I had not read the records.

"Q. Have you read the records since?—A. I think you have called my attention to them, and I can not say I have read them thoroughly, but I can say this, that *I am very sorry to have said anything or been the means of publishing anything about a man that has turned out not to be true.*

"Q. Well, do you know now that in both of those cases General Adams was not only acquitted but his accuser censured?—A. Well, as I say, I have not read the records, but I am perfectly willing to take that on your statement, Mr. Kennedy; and having said what I did a moment ago, I should like to say this further in explanation.

"Q. Well, I think what you have said is greatly to your credit, and I am perfectly satisfied with what you have said on that point.—A. Well, I should like to put in an explanation, if the chairman will permit me, of the manner in which some of these things came into that record. I had, when that document was made up, been the subject of an attack in the House of Representatives, based upon these affidavits, which have been shown, of Mr. Kittelle and Mr. Ely, and these letters which it appears were in the possession of General Bartholow and so on, and I felt considerably exercised about it and very sore. I had demanded of the member of the House who made this attack to see the papers on which he based it, and he had, as I considered, evaded my demand. He gave me a letter to General Bartholow asking Bartholow to give me the papers, particularly my letter, and on Bartholow's stating that he (Mr. Wilson) had the letters, Mr. Wilson declined to search any further for them, and left me in that position of being attacked under the privileges of the House of Representatives.

"Q. You mean Mr. Benjamin Wilson?—A. I mean Mr. Benjamin Wilson, yes. *That was the occasion of my using some of this matter, and it got in the record in the way in which it was used.*

"Q. Now, were you the author of the statement that General Adams' accounts were in arrears when he was discharged as quartermaster or from whatever office he held at the close of the Mexican war?—A. That statement came to me in a letter, which, I think, is in the record, from the Secretary of War, I believe.

"Q. Now, I want to ask you whether you have ever seen this certificate of non-indebtedness from the Treasury Department, dated at the Third Auditor's Office, June 18, 1884, and printed on page 46 of this pamphlet, entitled, 'Arguments made before the House Committee

on Foreign Affairs?' Perhaps you had better read it, so that the stenographer can take it down. It is very short.—A. (Reading):

'*Certificate of non-indebtedness.*

No. 6993.] TREASURY DEPARTMENT,
Third Auditor's Office, June 18, 1884.

It is hereby certified that the accounts and returns of Alonzo W. Adams, captain and A. C. S., United States Volunteers, * * * have been examined, found correct, and are closed.

This certificate is granted to satisfy the pay department that the above-named officer is not indebted to the United States on the books of this office at the date hereof.

E. W. KEIGHTLEY,
Third Auditor.

Metropolitan Hotel, room 164, city.'

"Q. Now, there is another certificate following that, showing *when* the account was closed.—A. Do you wish me to read the whole of it or give the date merely?

"Q. No; I think it is only fair toward this dead man that we should do something by way of reparation on the record.—A. (Reading):

'WAR DEPARTMENT,
OFFICE COMMISSARY-GENERAL OF SUBSISTENCE,
Washington, D. C., March 27, 1879.

SIR: Referring to my indorsements of December 17, 1877, and August 24, 1878, with reference to the accountability of A. W. Adams, who was captain and assistant commissary of subsistence of volunteers during the Mexican war, I have the honor to inform you that that officer's accounts have been closed on the books of this office, *it having been ascertained since the date of my above-mentioned indorsements that the amount* ($109.40) *previously reported as due the United States from him was satisfactorily accounted for by a transfer requisition* (*No. 7883*) *in the sum of $139.60, dated February 23, 1849, and*

passed to his credit in a settlement made at the Treasury Department February 24, 1849.

Very respectfully, your obedient servant,

R. MACFEELY,
Commissary-General Subsistence.

The honorable SECRETARY OF WAR.'

"Q. Do you notice that *General Adams' accounts were closed in 1849, shortly after the close of the Mexican war?*—*A. Yes; I notice that.*

"Q. Now, I want to ask you, Mr. Lines, whether you ever saw these documents before?—A. I think I have seen those before, but when, I do not remember.

"Q. Now, Mr. Lines, are you aware of the fact that after these documents were exhibited to the Senate committee and to individual Senators, a report was printed, in the name of the Senate committee, that reiterated those charges growing out of the courts-martial and alleged shortage in the accounts?—A. No, sir; I am not aware of that.

"Q. Well, did you take any steps—

"The CHAIRMAN. 'Was there such a report as that?

"Mr. KENNEDY.' Yes, sir.

"The CHAIRMAN. 'Who made it?

"A. Well, it was made. I think it was made either by Mr. Edmunds for you, sir, or by you yourself, and there was an exhibit in small type attached to the report reiterating those charges; that, I may say, now that General Adams is dead, nearly broke his heart. I was his personal counsel.

"The CHAIRMAN. 'You mean the charges broke his heart, or the report?

"Mr. KENNEDY. 'No, I mean the charges. The report did not say a thing against General Adams. There was nothing in the report that bore on General Adams at all, but the report was accompanied with an

appendix in small type from some previous report that reiterated those charges. That is all, Mr. Lines.

* * * * * * *

"The CHAIRMAN. I do not remember any report that I ever made, or in my consideration of this question, that General Adams' official conduct had any bearing or was commented upon or referred to in any way.

"Mr. KENNEDY. No; I think there was nothing about General Adams in the report itself, but I do remember distinctly—and I will show it to you by and by, if you desire me—I do remember distinctly, that in an appendix to the report these then-disproved charges against General Adams, touching his military history, were reiterated.

"The CHAIRMAN. Do you mean that the appendix of the report contained a copy of some previous report made in the House of Representatives?

"Mr. KENNEDY. No, I do not think it was a report in the House of Representatives. But I do want to say that I never have believed, and had no intention of suggesting here, that you or any other Senator would knowingly print anything about General Adams or anybody else, reflecting on his character, without what would be considered satisfactory proof; and my only purpose was to get out of Mr. Lines whether he or his associates took any pains after these documents were filed with the House committee—I mean the official reports from the War Department and the Third Auditor's office and the certified copies of the courts-martial—*whether Mr. Lines or any of his associates took any pains to redress the wrong which had been done to this man, touching his military history, which, of course, every soldier regards as precious.*"

The following statement will explain the foregoing

incident, and will illustrate the evils of appealing from the Executive to Congress, under the agencies employed by Mexico, in a question of diplomatic cognizance and international concern:

In a note to Mr. Frelinghuysen, dated May 1, 1882, *while the negotiations for a new convention were pending*, Mr. Romero, the Mexican Minister, inclosed what he described as "a synopsis of the evidence recently obtained by the government of Mexico of the fraudulent character of the claims of Weil and La Abra." In this synopsis, which was evidently prepared by Mexico's counsel, and which was *an argument and appeal for a retrial of the claims by a new commission*, the following statement was made to Mr. Frelinghuysen, on the authority of the Mexican government, in regard to General Adams, who had obtained the evidence in support of the Company's claim in Mexico:

> "After the Mixed Commission had been organized, it occurred to these unfortunate mining speculators to retrieve their lost fortunes by *forging* a claim against the Mexican government. In the execution of their conspiracy they sought for a proper agent to supplement their own perjured testimony by such evidence as might be necessary to impose upon the Commission, and their choice fell upon one Alonzo W. Adams, who was constituted the agent and attorney of the moribund Abra Mining Company to collect *ex parte* affidavits. In the new evidence submitted by Mexico will be found the history of his checkered career. (Case of Mexico, p. 59 *et seq.*)"

Among the charges made in this "synopsis" against General Adams were the following:

> "*Dismissed from the Army* at the close of the Mexican war, station unknown; *charged with fraud* in the

quartermaster's and *a defaulter in the commissary department, * * * three times court-martialed for* misconduct during the late war."

This "synopsis," with Mr. Romero's note enclosing it to Mr. Frelinghuysen, was transmitted to the Senate by President Arthur with the convention for a rehearing of the claim, and is printed in Executive M., Confidential, 47th Congress, 1st session. This document was reprinted in the appendix to Senator Morgan's report from the Foreign Relations Committee (Rep. No. 1316, Sen., 49th Cong., 1st sess., pp. 26–40), June 11, 1886, after these charges had been disproved by the production of the official documents. The disproof of these libellous falsehoods was doubtless potent in causing the rejection of the convention by the Senate. But that they should be republished by printing a "Confidential" message of the President as an appendix to a public Congressional document, without a word of explanation, was an outrage that ought to be impossible in a civilized country.

General Adams served in the Mexican war, and was brevetted Brigadier General by President Lincoln for services in the war for the Union. But he incurred the enmity of the Mexican Government and its agents in this country by going twice to Mexico and there collecting evidence in support of the claims of La Abra Company and other citizens of the United States. These false charges were made against him to raise a presumption in support of the other false charge that he had been guilty—as the Mexican Minister assured Mr. Frelinghuysen (*supra*)—"of forging a claim against the Mexican Government." This charge of forgery was disproved and abandoned long before this suit was brought, although, as said by Mr. Chief Justice Nott, in his dissent-

ing opinion, it was the one thing necessary to be proved to justify the subversion of the award.*

Since General Slaughter's agreement in 1877 with the Mexican Government, "to undertake the proof of fraud in the claim of La Abra Mining Company" for a share of the fund in controversy, payable only in the event of success, followed, as it was, by a similar agreement between the Mexican Government and Granger, reputations have been attacked and facts misrepresented so wantonly and persistently as to furnish a most signal illustration of the danger of assailing an award by such methods, and of the wisdom and authority of the old maxim, that it is to the interest of the commonwealth that litigation shall cease.

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*Speaking of the government's failure to prove such fraud as would justify the annulment of the award, Mr. Chief Justice Nott said:

> "There is but one way by which they can have the international question re-examined, and that way is by alleging and proving that the orders and letters of the Mexican officials, upon which the Umpire relied, and which made the international case presented to him, *never existed*, and that the award was obtained by fraud, effectuated, not by perjury, but by *forgery*." (*Record*, 850).

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk

No. 189. 29.

Brief of Wilson for Appt.

Filed Nov. 29, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 189.

LA ABRA SILVER MINING COMPANY, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

ASSIGNMENT OF ERRORS.

1. The Court of Claims erred in assuming jurisdiction over this matter, because it is not a case nor a controversy to which the United States is a party.

2. The Court of Claims erred in not dismissing the bill, because it seeks to review and reverse the action of the President of the United States in a matter of international concern exclusively within his discretion and control.

3. The Court of Claims erred in not dismissing the bill, because it requires a collateral inquiry to be made into the merits of an international award rendered by a tribunal of exclusive and final jurisdiction.

4. The Court of Claims erred in not dismissing the bill, because the alleged new evidence could have been obtained and used while the claim was pending before the international commission.

5. The Court of Claims erred in not dismissing the bill, because its allegations relate solely to issues passed upon by the international commission, and because the new evidence is merely cumulative and does not show the kind of fraud for which equity grants relief.

6. The Court of Claims erred in not dismissing the bill, because the proceeding seeks to deprive the company of its property without just compensation or without due process of law.

7. The Court of Claims erred in not dismissing the bill, because the alleged fraud was neither properly charged nor proved by the Government.

8. The Court of Claims erred (because of the unconstitutionality of the act) in entertaining jurisdiction of this suit.

SYNOPSIS OF FACTS BEARING UPON THE QUESTIONS OF JURISDICTION.

In the brief of counsel for La Abra Company will be found set forth in detail the facts necessary to the consideration of the questions of jurisdiction with reference to pages of the record.

Briefly stated, they are:

1. David J. Garth and Thomas J. Bartholow, in the spring of 1865, purchased certain mines in Mexico.

2. La Abra Company was incorporated under the laws of New York in November, 1865.

3. Garth *et al.* conveyed the mines to La Abra Company (its title not being in dispute).

4. In the purchase of the mines, erection of reduction works and machinery, extraction of ores, etc., the company expended $341,796.06. It began reducing ores in 1867.

5. The company alleged that by reason of unfriendly and hostile action on the part of Mexican officials it was forced

to abandon its property in February or March, 1868. (For details as to this, see Mr. Kennedy's Brief, page 3.)

6. On July 4, 1868, a convention was concluded between the United States and Mexico, and proclaimed February 1, 1869, by which such claims were submitted to a joint commission composed of two persons, one appointed by the United States and one by Mexico, with provision for an umpire in case of disagreement, the awards made by the commissioners or umpire to be final.

7. The company's claim was submitted to the commission June 14, 1870, by a memorial and docketed "La Abra Company *vs.* Mexico, No. 489."

8. The commissioners disagreed, and an award was made in favor of the company against Mexico by the umpire on the 27th of December, 1875.

9. Mexico filed a motion for a rehearing *September 19, 1876*, which was denied by the umpire *October 20, 1876*.

10. Pending the hearing, it was charged by Mexico that evidence produced by the company was false and procured by fraud, and testimony was taken in that regard by both parties while the case was pending, and was considered by the commission and the umpire.

11. Mexico, after the award had been made, attempted to reserve the right to show at a future time that the claim was fraudulent and the award was obtained by perjury.

12. The Mexican minister addressed a communication to Mr. Fish (Secretary), setting up this pretension on the part of Mexico, which Mr. Fish, *December 4, 1876*, declined to entertain.

13. March 29, 1877, Mexico made an agreement with Gen. James E. Slaughter, of Alabama, to pay him 10 per centum of any portion of La Abra award which he might procure to be waived or withdrawn. General Slaughter was to procure testimony for the purpose of impeaching the award, Mexico to pay $3,000 on account of expenses.

14. In November, 1877, Mexico arranged with one Granger,

who had testified twice in *support* of the claim and four times on behalf of Mexico *against* it, to produce witnesses adverse to the claim and "bind them to testify upon such terms as will be arranged by common agreement beforehand," Granger to receive $3,500 "only in case that the government shall be definitely and completely exonerated from the payment" of La Abra award.

15. Mexico had made payments on these awards which the United States had not disbursed. The contention of Mexico having been brought to the attention of Congress, it was by the act of June 18, 1878 (20 Stats., 145) provided that the President "is hereby requested to investigate any "charges of fraud presented by the Mexican government as "to the cases hereinafter named, and if he shall be of the "opinion that the *honor* of the United States, the *principles* "*of public law, or considerations of justice and equity* require "that the awards in the cases of Benjamin Weil and La "Abra Silver Mining Company, or either of them, should be "opened and retried, it shall be lawful for him to withhold "payment," etc.

16. The President, by Secretary Evarts, made this investigation. Mr. Evarts made his report August 8, 1879. It was approved by the President and communicated to the parties August 13, 1879.

He decided that neither the *principles of public law nor considerations of justice or equity require or permit* that these awards should be reopened and the cases retried before a new international tribunal, etc.; that there was "grave doubt" as to "the *sincerity of the evidence as to the measure of damages*" in the case of La Abra Company, and that "the "*honor* of the United States *does require* that these two cases "should be further investigated by the United States to as-"certain whether this Government has been made the means "of enforcing against a friendly power claims * * * "*based upon* or *exaggerated* by fraud."

"It may be that as the *main imputation* in the case of the

"*La Abra Company* is of a *fraudulent exaggeration of the claim* "*in its measure of damages*, it may consist, with a proper "reservation of further investigation in *this* case, to make the "distribution of the installments in hand.

"I have this subordinate consideration still under exam- "ination, and should you entertain *this distinction*, will sub- "mit my further conclusions on this point."

17. This was a decision by the Executive that the La Abra *claim* was not a fraudulent one.

18. On this subordinate question (extent of damages) Mr. Evarts reported to the President September 3, 1879, saying:

"Upon a renewed examination * * * I am con- "firmed in the opinion that the proper limits of further "consideration which the *honor* of the Government should "prompt it to give to this award, should confine the inves- "tigation to the question of a *fraudulent exaggeration of the* "*claim*," etc.

19. Mexico applied for a reconsideration of this question September 9, 1879, but on the 17th of September, 1879, Mr. Evarts' second report having been ~~offered~~ approved by the President, the payment of the three installments in hand was made to the company.

20. These reports and a supplemental one of Mr. Evarts, of April 13, 1880, were communicated by the President to Congress on April 15, 1880, and bills were there introduced directing the Court of Claims to investigate the Weil and La Abra claims, which failed because the Judiciary Committee of the Senate reported adversely to withdrawing these claims "from the dominion of international jurisdiction."

21. A treaty was negotiated in 1882 having for its object a retrial, but it was rejected by the Senate in 1886.

22. Attempts to amend and enlarge the act of 1878 were then again made in Congress, and failed until the close of 1889—three years of effort—when the bill, now the jurisditional act, was introduced.

Without further details, the act in question was passed in 1892 making up a case for the Court of Claims.

So, in brief, the conditions are these:

(*a.*) La Abra Company owned property in Mexico.

(*b.*) The company asserted that it had been deprived of that property by the wrongful act of Mexico.

(*c.*) It presented that claim to a tribunal having jurisdiction, created by treaty between the two nations.

(*d.*) That tribunal made an award that was final.

(*e.*) Mexico asserted before the award was made (and produced evidence on the subject) that it was procured by fraud and perjury, and again asserted it after it was made.

(*f.*) The political department decided that the claim was a valid one, that the award was final, but that the *honor* of the United States required that this complaint of Mexico should be investigated for a definite purpose—the ascertainment of damages—etc., and Congress directed a suit to be brought against La Abra and assigns in the Court of Claims, with the power to render a final decree foreclosing all claims of the company on account of this award.

POINTS.

I.

The company has a vested property right in this award of which it cannot be deprived without due process of law.

II.

The United States had no interest of a pecuniary nature in the award or the money paid on account of it.

III.

The United States had no such relations to the case as that they could go into any court and maintain any proceeding against any party claiming an interest.

IV.

Congress undertook to create a case by the act in question. This was beyond its power.

V.

The judicial power is limited by section 2, article III, of the Constitution to "cases in law and equity arising under "the Constitution * * * laws * * * and treaties, "and to controversies to which the United States shall be "a party."

VI.

This limit fixed by the Constitution cannot be extended by Congress.

United States vs. Hudson, 7 Cr., 33.

Story on the Constitution, sections 1590–1594.

See also section 1703 of Story, where it is said, treating of this section:

"Affirmative words often by their operation imply a *nega-* "*tive of other objects* than those affirmed. And in this case, "a negative or exclusive sense must be given to the words, "or they have no operation at all."

VII.

This is not a "case" arising under the Constitution, a treaty, or a law.

It being clear that Congress cannot confer jurisdiction over matters not enumerated in the Constitution, it becomes necessary to consider whether what we have here is or is not a "case" in the sense which the term is used in the

section under consideration, and whether it "arises" under the Constitution, a treaty, or a law, for it must not only be a *case*, but must *arise* under the Constitution, a treaty, or a law, to bring it within the judicial power.

(*a.*) It is not a "case" within the meaning of the Constitution.

There can be no "case" unless a party has some *right* to be asserted.

The judicial "power is capable of acting only when the "subject is submitted to it by a party who asserts his *rights* "in the form prescribed by law." (*Osborn vs. The Bank*, 9 Wheaton, 819.)

The United States is not asserting any right, and has no right to establish which it could appeal to the judicial power.

(*b.*) The rights as to which the judicial power may be invoked "*must be rights of person or property;* not merely "*political rights, which do not belong to the jurisdiction of a* "*court, either in law or equity.*" (*Georgia vs. Stanton*, 6 Wall., 50–76.)

VIII.

It must not only be a *case*, but must also be a case *arising* under the Constitution, a law, or a treaty.

This controversy does not "arise" under either.

"A case may be said to *arise* whenever its correct decision 'is dependent upon the *construction* of the Constitution, 'laws, or treaties of the United States." (*Osborn vs. The Bank*, 9 Wheat., 819.)

"A case in law or equity consists of the right of one party "as well as the other, and may be truly said to *arise* under "the Constitution, or a law, or a treaty of the United States

" whenever its correct decision depends upon the *construction* " of either."

Story on the Constitution, sec. 1648.
Cohens vs. Virginia, 6 Wheat., 378.

This proceeding does not depend upon the construction of the Constitution, a law, or treaty.

IX.

It is not a *controversy* "to which the United States *shall* be a party."

CONTROVERSIES.

What are the "controversies to which the United States shall be a party," within the meaning of that word as used in the Constitution? "Controversies" embrace only *civil suits.*

Note 1 to section 1674 of Story on the Constitution is as follows:

"Mr. Tucker distinguishes between the word 'cases' used in the preceding clauses and the word 'controversies' here used (referring to said clause of the Constitution). The former he deems to include all suits, criminal as well as civil; the latter as including only such as are of a civil nature. As here applied, controversies 'seem,' says he, 'particularly appropriate to such disputes as might arise between the United States and any one or more States respecting territorial or fiscal matters, or between the United States and their debtors, contractors or agents. This construction is confirmed by the application of the word to the ensuing clauses, where it evidently refers to disputes of a civil nature only, such, for example, as may arise between two or more States, or between citizens of different States, or between a State and the citizens of another State,' etc. 1 Tuck. Black. Comm. App., 420, 421. Mr. Justice Iredell, in his opinion in *Chisholm vs. Georgia*, 2 Dall., 419, 431, 432,

gives the same construction of the word 'controversies,' confining it to such as are of a civil nature."

See also—

Cohens vs. Virginia, 6 Wheat., 411, 412.
Curtis' Com., sections 66, 67, 73.

A "suit" is a prosecution or pursuit of some *claim, demand*, or *request* (*Cohens vs. Virginia*, 6 Wheat., 264); it is a prosecution of some demand in a court of justice. Suit applies to any *proceeding* in a court of justice in which the plaintiff pursues his remedy to recover a *right* or *claim* (18 Wall., 553). It is any action or process for the recovery of a *right* or *claim*, legal application to a court for justice, the prosecution of a *right* before any tribunal, as a civil suit, a criminal suit, a suit in chancery (Webster's Dictionary).

It is respectfully submitted, therefore, that the word "controversy," which is synonymous with "civil suit," relates to a matter wherein the party who brings it is setting up some *right, demand, or claim* in which he has an interest to be enforced by some judicial tribunal. A party plaintiff is a party who asserts a *right in himself* or one who asserts a right in some one who is legally incapacitated to sue and whom he is by reason of his relations legally empowered to represent.

This is not such a "controversy."

In this case the United States is *not asserting any right in itself*, but is practically and in effect, so far as any pecuniary interest is concerned, representing the government of Mexico. The only relation the Government of the United States has to this case is political in its character. In the inception of the case, the United States in its political capacity negotiated the treaty as a means of enabling its citizens to have a judicial ascertainment of their rights against Mexico. After the award was made, Mexico, notwithstanding the finality provision of the treaty, through her minister, Mr.

Mariscal, communicated to the Department of State (Secretary Fish) an objection to the award on the ground that it was procured by fraud and perjury.

On December 4, 1876, Mr. Fish declined to entertain or consider any question as to the finality and binding nature of the awards. Mexico, however, continued to make its objections and appeals to the political department of the Government, as has already been stated, and finally it was decided by the political department that neither the principles of public law nor considerations of justice or equity required or permitted, as between the United States and Mexico, that the award in this case should be opened and the case retried before a new international tribunal or under any new convention or negotiation.

Nevertheless, a subsequent treaty was negotiated, as we have already seen, for the purpose of reopening this award; which subsequent treaty was submitted to the Senate for its concurrence and rejected. This rejection followed the introduction of a bill in Congress having for its object the submission of this controversy to the Court of Claims, which was reported adversely by the Committee on the Judiciary, then composed of Messrs. McDonald, Thurman, Bayard, Garland, Lamar, Davis, Edmunds, Conkling, and Carpenter. Their report, after stating that the facts involved were of an international character, which, in the opinion of the committee, properly fell to the executive department of the Government, proceeded to say:

"The bill under consideration proposes to withdraw those two claims (one being La Abra) from the dominion of international jurisdiction and place them before a tribunal organized and existing solely by virtue of the laws of this country, and in this way it would seem designed to avoid the opening up of other questions of complaint that are known to exist on behalf of citizens of the United States which for various causes failed to receive favorable consideration by said commission under the treaty creating the commission. * * * It would seem right that if it is to

be set aside as to any of the claims, it ought to be by a new convention in which provision should be made for doing justice to all the claimants."

From this it is obvious that it was then the opinion of the Committee on the Judiciary of the Senate, composed of the eminent lawyers named, that this controversy was international in its character and could only be dealt with by the political department of the Government by means of the negotiation of a new treaty reopening the matter of the adjudication of all the claims alike submitted to the Mixed Commission under the treaty. It certainly was within the power of the President, in his discretion, to negotiate a treaty with Mexico in relation to this matter. It was clearly within his jurisdiction, and, to use the language of this court in the case of *Frelinghuysen vs. Key* (110 U. S., 75), "that "discretion of the executive department of the Government "cannot be controlled by the judiciary."

If that discretion cannot be controlled by the judiciary, it hardly need be said that it is not within the power of Congress to authorize the judiciary by any judgment or decree to control that discretion; but that is exactly what this act making up this case for the Court of Claims does. By its very terms the court "may enter a decree which shall bar "and foreclose all claim in law or equity on the part of said "La Abra Silver Mining Company * * * to the money "or any such part thereof received from the Republic of "Mexico for or on account of such award," and the President is authorized "to return to said government any money "paid by the government of Mexico on account of said "award remaining in the custody of the United States * * * "which said court shall decide that said persons are not en- "titled in justice and equity to receive out of said fund," with a further provision for distribution of the money in case it is decided that the claimant is entitled thereto.

It is respectfully submitted that this is an encroachment

upon the powers of the President. It is an interference with the political department of the Government in respect of the powers and duties devolved upon that department and the discretion of the President in respect thereof. It will be observed, as we have already said, that this is not a submission of this case to the Court of Claims for the purpose of securing a finding of the facts to be submitted to the President for his advice or his aid, but is an act which obviously contemplates—indeed, expressly provides—for a final adjudication of the claim, which is intended unmistakably to control the President's action in respect of the disposition to be made of the money on hand.

X.

The act is void because it trespasses upon the domain of the political branch of the Government.

In its inception and throughout this is a matter that belongs to the political department of the Government.

(*a.*) The matter of protecting the citizen against the wrongs of a foreign power is *political;* at every stage it is political and because it involves dealings with a foreign government. It cannot be transferred from that department to the judicial or to any other department so as to divest that department to which in its nature it belongs of authority over it or control of it.

The Constitution has located it, and there is no power short of an amendment of that charter that can change it, and so, no matter what judgment or decree may be rendered by any court, the Executive might wholly ignore it as a meddlesome, unauthorized interference with his powers.

He would not be bound by any obligations of his office to regard what any court would adjudge or decree, but, notwithstanding such judgment or decree, would be free to do what he deemed to be his duty. Whatever might be his

respect for the tribunal, he must be responsible for his own judgment, for on him is imposed the responsibility.

The decree in this case cannot bind him; it cannot be enforced. It may be absolutely disregarded, and there is no remedy, and all of this because of an attempted invasion of the Executive by the legislative or judicial power.

The umpire in this case distinctly decided that Mexico had failed in her duty to protect this company, and that compensation must be made for this. He ascertained what that compensation should be by finding the amount of money actually expended by the company.

Can it be possible that the question of the *amount* of such liability can be taken out of that department and turned over to the judiciary for its determination? Suppose the President disagrees with the court, can he be compelled to adopt and execute its judgment? Suppose that notwithstanding the decree, he looks into the record and reaches the conclusion at which Mr. Chief Justice Nott arrived, viz., that Mexico's liability is the amount of the award, less $117,000, may he not act accordingly?

This decision that Mexico was liable was afterwards, at the instance of Mexico, considered by the President, and he determined that there was a valid claim. The only thing left undetermined was the question of fraudulent exaggeration of damages.

In such a case can this determination of such liability be segregated from the political department and transferred to the judicial, either with or without the consent of the former? Can it be possible that when the President has decided that Mexico was liable under the facts as known to him a court can adjudge to the contrary?

He would be acting within his own jurisdiction. No court could enforce its judgment to the contrary, and, if his refusal to obey the judgment of the court were made the ground of impeachment, such a proceeding would obviously

fail, because the court was interfering with a matter as to which he had jurisdiction and the court had not.

XI.

Due process of law.

Even if Congress had power to confer jurisdiction on the Court of Claims, the interpretation of the act in question by that court makes it *not* "due process of law," as it was a proceeding not according to the course of the *common* law.

By "due process of law" is meant "a course of legal proceeding *according* to those *rules and principles* which have "been established by our jurisprudence for the protection "and enforcement of private rights."

Pennoyer vs. Neff, 95 U. S., 714.
Kennard vs. Louisiana, 92 U. S., 480.
Hagar vs. Rec. Dist., 111 U. S., 701.

Among the rules and principles that have been established are that a party claiming to be aggrieved must show the exercise of due diligence, etc.

And it must be open to inquiry whether he did or did not have the very evidence upon which he now relies and suppressed it or did not avail himself of it; whether, in short, he was not himself guilty of laches or worse than laches, because of which negligence or dirty hands a court of equity would unceremoniously turn him out of doors.

Due process of law involves considerations such as these, but the Court of Claims in dealing with this act seems to have felt compelled to take a different view.

Mr. Justice Weldon, in declaring the opinion of a majority, says:

"The question of diligence on the part of Mexico is not, "we conceive, before this court; that question was passed

'upon by Congress in the passage of the law giving us 'jurisdiction, etc." There is a quiet, grim humor in this.

The Court of Claims was not oblivious to the fundamental principles of equity involved in a case of this character and had not lost sight of one of the most conspicuous, to wit, that a party making complaint must show proper diligence, etc., yet felt constrained to say that they had been released from considerations of that character, as Congress had kindly dispensed with that particular element of what constitutes "due process of law."

If the act bears that interpretation, it is grossly violative of constitutional rights of the citizen. It is hostile to the principles of constitutional government; it makes the citizen a defendant in its own suit and robs him of his defense.

If it will not admit of that interpretation, then a great and grievous error has been committed, for, as will hereafter appear, Mexico did not have clean, but very *dirty*, hands. She had, or by the exercise of the most ordinary diligence could have had, this very evidence which is now said to be newly discovered. In short, she has not only been guilty of the grossest laches, but of concealment and bad faith to such a degree that when exposed in a court of equity that was untrammeled would have been incontinently "turned down."

Yet the court felt constrained to omit the consideration of those principles that enter into "due process of law," because Congress had generously relieved it from such considerations.

Whether the act does or does not do this, whether the court was right or wrong in so construing it, can make no difference. The company was deprived of a most important element of what constitutes "due process of law," either by the act or by the construction placed upon it.

XII.

If this act is void as an attempt to confer judicial power, it cannot be upheld for the purpose of conferring mere "advisory" authority.

1. It cannot be diverted from the obvious purpose for which it was intended by Congress to a wholly different purpose. The intention was to confer *judicial* power. This is evidenced by—

(*a.*) The provision for a suit.

(*b.*) The authority to issue injunctions, make interlocutory orders, final decrees, etc.

(*c.*) The provision for an appeal from any final decision to this court.

(*d.*) A legislative injunction prohibiting the Secretary from paying out any of the money pending the suit—a palpable interference with the executive department.

2. The act is a systematic whole and all must stand or all must fall. It can only be used for what was intended. It cannot be availed of for what was not intended.

> *United States vs. Ferreira*, 13 Howard, 373, and note appended thereto in relation to the cases of Yale Todd and Hayburn.

"As the act of Congress intended to confer on the courts "a judicial function, it could not be construed as an author- "ity to the judges comprising the court to exercise the "power out of court in the character of commissioners."

No provision can be taken out of this act without defeating the obvious intention of Congress. There is no hint that it was intended to be advisory. On its face it shows that it was intended to control, and not to advise the President.

XIII.

Has this court jurisdiction to entertain an appeal?

The answer to this depends upon several questions:

1. If it is a matter that is justiciable by an inferior court that has jurisdiction; yes, because this court is empowered to correct the errors of inferior courts.

2. If the inferior court had no jurisdiction, this court has the power to so determine; and if it determines it had none, then, of course, this court has none to entertain the appeal.

3. If the act is only to get advice from the Court of Claims for the guidance of the Executive, this court must dismiss the appeal, because this action of the Court of Claims is only advisory, and not judicial.

XIV.

If the Court of Claims has jurisdiction, this court must review the whole evidence.

This was the view taken below by both parties to this litigation, and also by the Court of Claims. The complainant did not make any request for finding of fact, nor did the defendant.

Mr. Justice Weldon, in delivering the opinion of the court (R., p. 838, 839), held that this was not a case in which that court was required to find the facts, but that it was a case in equity in which the whole record—all the testimony—must go to this the Supreme Court for its consideration, and he cites *Harvey vs. The United States*, 105 U. S., 671, in support of this conclusion.

All parties and the court concurred in the view that this was a proceeding in equity where findings of fact would be inappropriate.

That Congress intended that this case, involving matters of international concern, should be subjected in all its elements to the scrutiny of this court cannot be doubted. If this court should now hold that findings of fact are essential under the circumstances just mentioned, the ends of justice and the purposes of the act would demand that the case be remanded for such findings.

But it is by no means conceded that findings of fact are necessary or permissible in this case. On the contrary, if the Court of Claims had found the facts, this court would send for the entire record, as was done in the case of *The United States vs. The Old Settlers*, 148 U. S., 465.

This is a case in equity.

(*a.*) The act provides for a suit to set aside and forever foreclose any claim to this award.

(*b.*) It provides for the exercise of equity powers.

(*c.*) It provides for ascertaining what, if any, part of this award was procured by fraud.

(*d.*) It provides for an appeal.

If, as is contended, a finding of facts is required, then the appeal to this court would be useless.

The ultimate fact in the case is fraud or no fraud.

Whether there was fraud or not is the one fact in the case.

That one fact is to be deduced from the evidence.

Everything that the Court of Claims could do in respect of findings, aside from the one fact upon which the case hinges, would be to find what the various witnesses testified to, etc., from which the fact of fraud or no fraud was determined.

This would be putting the evidence in the record in the form of findings, so that in the one form or the other this

court must review the evidence, or the appeal provided for is an empty and idle formality.

It is respectfully submitted that if this court should proceed only upon findings of fact and not by reviewing the evidence, the intention of Congress will be defeated.

JEREMIAH M. WILSON,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,

No. 189. 29.

Mem. of Argt. of Wilson for Appt.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Feb. 20, 1899.

No. 189.

LA ABRA SILVER MINING CO., APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

Memorandum of Opening Argument of Mr. J. M. Wilson for the Appellant.

STATEMENT OF FACTS.

1. La Abra Company owned mines and other property in Mexico.

2. The company abandoned this property, and alleged that it was compelled to do so by reason of the unfriendly and illegal acts of Mexican officials and of the Mexican populace, by reason of which, and the refusal of the authorities to grant protection when applied for, loss was sustained.

3. This claim was submitted to the joint commission created by the convention of July 4, 1868, between the United States and Mexico, and an award was made by the umpire, Sir Edward Thornton, December 27, 1875, in favor

of the company, he holding that the Mexican officials had not afforded the protection to which the company was entitled.

4. Mexico claimed that the award had been procured by fraud and perjury, and the act conferring jurisdiction on the Court of Claims, in section 1, directs the Attorney General to bring suit to determine whether that award, as to the whole sum or *any part thereof*, was obtained "by fraud, "effectuated by means of false swearing, or other false and "fraudulent practices on the part of the said La Abra Silver "Mining Company or its agents, attorneys, or assigns."

Section 2 gives the court jurisdiction to render such decree "*as the evidence may warrant, according to the principles "of equity and justice.*"

Section 4 provides that if the award is adjudged to have been "obtained by fraud, effectuated by means of false "swearing," &c., the company and its representatives or assigns shall be barred of all claim, &c.

Section 5 provides that if it shall be finally adjudged "that the *award* or any *definable* or *severable* part thereof "was *not* obtained through fraud as aforesaid," then "so "much of the said award" shall be distributed to the persons entitled thereto.

Briefly summarized, this act provides that the court shall adjudge according to the principles of equity and justice whether the award as to the whole sum or any part of it was procured by fraud effectuated by false swearing, &c. If in whole, the whole to be barred; if not so procured, the whole to be paid; if only in part it was so procured, that part to be barred, and the residue, not tainted with such fraud, to be paid.

BRIEF.

POINT I.

THE QUESTION WHETHER LA ABRA COMPANY HAD A VALID CLAIM AGAINST MEXICO IS NOT OPEN TO INQUIRY IN THIS PROCEEDING.

1st. The antecedent history, of which this court is fully informed and will take notice, and a part of which is in the record, precludes such inquiry.

The liability of Mexico under the principles of international law was first determined by the umpire, he holding that Mexico had failed in her duty towards this company.

And, secondly, it was again determined by the executive, after a thorough examination of the evidence before the umpire and evidence produced after the award was made. The executive department held that any further inquiry should be limited to the question of fraudulent exaggeration of damages (R., p. 13).

After this, distributions were made of installments up to 1881. (See extended statement on this in brief for appellant, pp. 22–24.)

This was a determination that there was a valid claim against Mexico. (See dissenting opinion of Nott, C. J., R., p. 843; Brief, pp. 47–70.)

POINT II.

THE AWARD IS AT LEAST PRIMA FACIE PROOF IN THIS CASE THAT LA ABRA COMPANY HAD A VALID CLAIM AGAINST MEXICO FOR THE "SUM" NAMED IN IT; AND THE BURDEN OF PROOF IS ON THE UNITED STATES TO SHOW THAT, IN WHOLE OR IN PART, IT WAS PROCURED BY FRAUD, EFFECTUATED BY FALSE SWEARING, &C.

The treaty under which it was made created a judicial

tribunal to which the claim was submitted and provided that the *award* should be *final*.

This is not a trial *de novo*.

The act recognizes the award and provides for a suit to get rid of it, or reduce it, or confirm it.

The suit concerns that award, and the court is required "in all respects to proceed according to law," and render such decree as the "evidence may warrant," "according to the principles of equity and justice."

Therefore the award, being the judgment of an international tribunal, which judgment is to be destroyed, if at all, by a legal proceeding according to law and the principles of equity, must be regarded as valid in every respect until by evidence according to the rules of equity it is set aside.

The case of The Choctaw Nation *vs.* The U. S. is instructive if not conclusive on this point (119 U. S., 1).

In that case there was a submission by treaty between the nation and the United States of certain differences to the Senate, and the award of the Senate was by this treaty agreement to be final, and an award was made by the Senate.

Nevertheless Congress referred these same differences to the Court of Claims, with jurisdiction to try "*de novo*," and with the express provision that the court "shall not be estopped by any award of the Senate;" and this court held that the award should have "the *prima facie* effect of establish-"ing the validity of the claim," and that the burden of proof was upon the United States to show its want of merit.

But the case at bar is much stronger than the Choctaw case in favor of our contention that the award must have at least *prima facie* force, because in this there is no requirement that the proceeding shall be *de novo*.

Point III.

TO SET ASIDE THIS AWARD THERE MUST BE CLEAR PROOF THAT IT WAS PROCURED BY FRAUD, EFFECTUATED BY FALSE SWEARING.

If there was before the umpire evidence sufficient to justify or sustain his conclusion that Mexico had so failed in her duty under the rules of international law that La Abra Company had a valid claim, which evidence has not been shown to be perjured, then his conclusion in that respect must be sustained.

The finding of the umpire on this feature of the case is on page 8 of the record.

The fundamental question of fact upon which Mexico was held liable, and for the want of which there could not be an award in favor of the company, was and is this question of hostile acts of Mexican people and officials, and failure to protect.

That is the basis of the action of the umpire.

He found from the evidence before him that the hostility did exist; that the protection was not afforded, although the company appealed to the higher authorities, and that by reason of this the company had a valid claim, and he so awarded.

Now, was that conclusion procured by false swearing, &c.?

That is the question here, or it may be otherwise stated thus: Was there evidence before the umpire that was not fraudulent or perjured, upon which he could find and was justified in finding that such hostility existed and such protection was not afforded? If there was such evidence, then it is impossible to find that the award, so far as regards Mexico's liability, was procured by fraud, &c.

This involves an examination of the evidence before the umpire and the evidence adduced since as to the integrity of such as was before him, upon which he found that Mexico was liable.

The evidence before him was conflicting.

He had to determine as to its reliability and the weight to be given to such as was reliable, and in order to overthrow or set aside his award it must be made to appear that

he was led to make it by false swearing or fraudulent practices of La Abra Company, its attorney or agents.

It is not a question whether there was conflict of evidence, or whether any witness testified falsely, or how the testimony of such witness was procured, but it is the question whether his conclusion that there was a valid claim was based on false or fraudulent testimony.

The burden being on the United States to show that it was so procured, and the underlying question being whether or not these hostilities did exist, and whether or not there was a failure of duty on the part of Mexican officials, it becomes necessary to examine the evidence that was before the umpire, and that since produced, and thereby to ascertain whether there was evidence, unimpeached, by which the award is sustained.

EVIDENCE BEFORE THE UMPIRE.

Matias Avalos, p. 52.

Matias Avalos has not by any one, before or since, been discredited as a witness.

On the contrary, his truthfulness and honesty are established, as follows:

(*a.*) Ralph Martin indorses him as an honest, truthful man (p. 470).

Dahlgren says he is a truthful, honest man (p. 98).

In a subsequent deposition, Avalos reaffirmed what he had before testified in this matter (R., p. 93), and in that connection (p. 94) states the details of the effort that was made to force from him a retraction of his evidence formerly given.

He is a truthful, conscientious, honest man, and this infamous effort was unavailing.

What he says is worthy of the most serious consideration in this case, as it must shed a flood of light upon methods and evidence produced by Mexico to overthrow this award (R., p. 94).

Marcus Mora.

His deposition was before the umpire.

He was one of the Mexican officials, as will presently appear.

He testified to this hostility (R., pp. 86, 87).

Jesus Chavarria.

His deposition was before the umpire, and is in the record, pp. 80, 81, 82, 83, and 84.

He is vouched for as a lawyer of high character by Marcus Mora, as follows:

"He is perfectly well acquainted with Lawyer Chavarria; "that he enjoys a high reputation in his profession and is "considered as a truthful and respectable man" (R., 87).

And *Barraza*, the judge, says of him that he is a resident of Durango, one of the first of its lawyers, and on account of his dignity and well-known integrity *his deposition is beyond all doubt entitled to full faith and credit* (R., p. 85).

In addition to this, there is documentary evidence, upon which no suspicion rests, that of itself justifies the conclusion of the umpire. (See orders, pp. 54, 829, 830.)

This is corroborated by the testimony, taken by the United States in 1894, of De Lagnel (R., pp. 500, 501, 515).

If there is anything in this record, that has been produced since this award was made, that shows that this testimony is false, that these witnesses perjured themselves, counsel for the Government will point it out.

This evidence shows unmistakably just what Sir Edward Thornton found, viz., that the people and the minor officials were engaged in acts of hostility, and that the higher officials, although appealed to for protection, failed to afford it.

It shows a determined purpose on the part of the people, encouraged by the officials, to drive the company out, and it shows that the high authorities refused protection.

OTHER ACTS OF VIOLENCE.

Apart from the general attitude of hostility of the authorities, the following specific interferences with the conduct of its business were detailed by numerous witnesses:

(*a.*) That its supply trains were seized by military officers and large sums exacted and paid for their release (Record, pp. 31, 35, 47, 56, 58, 62, 72, 74, 171).

(*b.*) That two of the company's trainmasters were murdered (*ib.*, 47, 49, 52, 56, 60, 63, 72, 74, 171, 172).

(*c.*) That its ores at the mouth of the mine and on the patio were stolen (*ib.*, 32, 49, 57, 61, 83, 88, 98, 152, 185, 186).

(*d.*) That orders and threats of ejectment were unlawfully made by the prefect at San Dimas and the local magistrate at Tayoltita (*ib.*, 49, 52, 54, 72, 73, 124, 125, 129).

(*e.*) That Judge Soto seized some land belonging to the company and put up reduction works on it (*ib.*, 123, 4thly; 278, 279.)

(*f.*) That the company's superintendent was unlawfully imprisoned in January, 1868, and after appealing in vain to higher authority for protection and redress was forced to abandon the property late in February or early in March, 1868 (*ib.*, 31, 48, 61, 68, 69, 70, 83, 87, 119, 120, 128, 129, 152, 154, 155, 156, 655, 656, 712, 713).

(*g.*) That the local officials afterwards asserted that they had driven the company away and would never let it return (*ib.*, 49, 50, 57, 58, 69, 70, 73, 74, 84).

(*h.*) That Judge Soto moved with his family into the company's hacienda and took possession of its property when Exall left (*ib.*, 51, 52, 165, 179, 185).

THE NEW EVIDENCE.

How the evidence before the commission is affected by the evidence taken subsequently. This subsequent evidence embraces:

(*a.*) The company's letter-press copy book (198–282).

(*b.*) Eight (8) letters from D. J. Garth, the company's treasurer, in New York, to Charles H. Exall, the company's superintendent, at Tayoltita, dated, respectively, May 10, May 20, May 30, June 10, July 10, July 20, August 10, October 10, 1867 (282–286).

(*c.*) Five (5) letters from Exall to Granger dated, respectively, Mazatlan, March 15, 1868; San Francisco, April 7, 1868; New York, May 8, 1868; New York, June 15, 1868; Richmond, July 18, 1868 (286–290).

(*d.*) Depositions of J. F. and Trinidad Gamboa and J. M. Loaiza, taken *ex parte* by the Mexican government at Noria, June 15, 1877, and at San Ignacio, June 5, 1877 (290–295).

(*e.*) Depositions of Frederick Sundell, taken *ex parte* by the Mexican government at Mazatlan, August 9, 1877 (296–303).

(*f.*) Depositions of Quiroz, Gutierez, Gurrola, and Delgado, with certified copy of letter of C. B. Dahlgren to Quiroz, taken *ex parte* by the Mexican government at San Dimas, May 30, 1877 (304–307).

(*g.*) Annual reports of La Abra Silver Mining Company, made under the laws of the State of New York, for 1866, 1867, 1868, and 1877 (307–310).

(*h.*) Testimony taken by a subcommittee of the Senate Committee on Foreign Relations, as contained in Report No. 2705, Senate, 50th Congress, 2d session.

(*i.*) Testimony taken in this case (461–749), with exhibits, including the opinion of the Mexican commissioner, Señor Zamacona (382–406), the argument of the Mexican agent, Señor Avila (407–422), extracts from the company's blotter book (750–752), other extracts from the company's books (753), and the "Slaughter pamphlet" (754–802).

On the question how the case, as it stood on the evidence before the commission, is affected by the evidence subsequently taken, Mr. Chief Justice Nott made the following statement in his dissenting opinion (843, 844):

"Referring now to the umpire's determination of the preliminary question of governmental liability, it must be conceded that at least one of the witnesses is shown to have been unworthy of belief, except so far as his testimony was corroborated by others, and that many of the alleged grievances were greatly, if not grossly, exaggerated.

"*But the evidence now before the court still leaves a number of facts established as completely as they were supposed to be established by the umpire.* The company did exist; it was formed by reputable business men for legitimate business purposes. There was no fraudulent design *ab initio*. They invested a large amount of money in the venture; they bought these mines in Mexico; they transported to them costly mining machinery; they carried on through the designated years an actual mining business.

"As regards the Mexican authorities, *there are other things which also remain equally certain.* The written orders of Soto, Mora and Valdespino, which were the only positive, uncontroverted evidence before the umpire of the interference of the Mexican officials and the evidence upon which he manifestly relied, *remain as well established now as they were then.* The superintendent was arrested and imprisoned. (The cause of his imprisonment may have been the personal indignation of the magistrate, as contended by the complainants, but nevertheless their witnesses show that the quarrel, if it was a quarrel, sprang out of the superintendent's perfectly proper management of the company's property in his custody.) Mule trains were stopped; military exactions were made; the civil authorities did interfere with the company's management of its own mines; the company did finally abandon the property.

"With these facts still in the record it cannot be said that upon this, the main issue in the case, the umpire would certainly have come to a different conclusion. A judgment is not to be set aside because one witness is shown to have been mistaken or to be unworthy of belief or to have sworn falsely if there be evidence enough remaining to sustain the verdict. We may now be satisfied that the witness Granger, an important witness for the claimants, was utterly unworthy of belief and much of his testimony false. But he stood contradicted and impeached by himself before the umpire. His subsequent testimony had been taken by the Mexican government in the form of four affidavits at different times

and was in the case. Nevertheless the umpire made his award."

(*a.*) The company's letter-press copy book is the most important part of the new evidence. The Court of Claims found that by due diligence it could have been produced at the original trial before the commission (841). It was in possession of Granger, who had been employed as book-keeper by the company at Tayoltita, six of whose depositions were before the commission—two for the company and four for the Mexican government. He produced this letter book in December, 1877, with other books and papers, some two years after the award, under an agreement with the Mexican government by which he was to receive $3,500 in case Mexico should be entirely exonerated from payment of the amount awarded to the company by the umpire (574, 575, 590, 591).

On this point Mr. Chief Justice Nott said (848):

"Furthermore it appears from the evidence now before us that the Mexican government agreed to pay Granger $3,500 in consideration of his producing evidence which should lead to the setting aside of the international award. Granger thereby became jointly interested with Mexico in the result and as much interested in spoliating and withholding records as if the proceedings were an individual suit on his own behalf to recover $3,500. Furthermore, it appears he was an unscrupulous character, who changed his testimony to suit his employers, and who produced from the archives of the company papers on one day for the one party and on another day for the other. Furthermore, it appears that he was an accomplished book-keeper and a man of unusual ability. Finally, it appears that he had been the book-keeper and accountant of this same company, familiar with all of its transactions in Mexico, and with all of its litigation before the international commission, and that he knew precisely what to produce and what to withhold.

"The government of Mexico undoubtedly has produced all of the books and papers which it received from Granger, and in the condition in which they came to its possession. But they, with the other books and papers of the company, were for ten years in the possession of Granger. He was

not subjected to examination and cross-examination in regard to them; they came from him in a mutilated and incomplete condition; he had a direct personal interest in producing those which would make for the complainant's case and in suppressing those which would be adverse to it. *Omnia præsumuntur contra spoliatorem.*"

This book has the usual form for an alphabetical index, but it is not indexed. Nearly all the letters from the company's superintendents in Mexico to the home office were written and copied on separate sheets of tissue paper at the port of Mazatlan, distant about 150 miles from the mines, and these loose sheets were taken back to Tayoltita, where they were pasted in the copy book (480, 516, question 252).

The first letter copied in the book is dated January 10, 1866. Much of the copy is illegible and it is omitted entirely from the printed transcript. Two other copies, pages 67 and 137, are so illegible that they have not been printed in Exhibit B.

As already stated, the first letter in the book is dated January 10, 1866, six or seven months after the operations of the company began, during which its trains were detained *en route*, as appears from Echeguren's testimony (104, answer to question 9th).

Many important letters favorable to the company have either never been inserted in the book or have been abstracted from it. Among the missing copies of letters known to have been written are those of May and June, 1866, from De Lagnel to Garth, notifying him of two drafts, each for $15,000 gold (494, 504, 606, 702), and another from the same to the same, giving an account of an assay of the company's ores made at La Puerta, the results of which were so favorable as to cause great elation (484, 486, 496, 497, 514, 516, 607, 608, 703).

Another very important letter, written by Exall to Garth June 11, 1867, just after the orders of Mora and Soto of June 3, 4, and 5, is missing. Garth acknowledged its receipt in

his letter of August 10, 1867 (286, top of page). This missing letter doubtless gave a full account of the interference of the local magistrates with the company's work and their threats of ejectment. It was written at Mazatlan, and the usual practice, as already stated, was to copy these letters on separate sheets and paste them into the copy book at Tayoltita (516). If a copy of this letter was so pasted in it was subsequently abstracted. There is a strip of mucilage with a roughened surface from which the missing copy might have been removed. A speck of paper attached to the mucilaginous surface indicates such removal. Page 154 has been entirely removed. Letters from De Lagnel to Garth, which were sent by a carrier, who died from snake bite between Tayoltita and Mazatlan, do not appear in the copy book, although written at Tayoltita (495, 507), nor does De Lagnel's report of the "armed demonstration" of the company's Mexican miners against the company appear in the letter book, although he testified that he "should take it for granted" that he reported it to the home office (513).

A letter written by Exall to Del Valle November 26, 1867, asking his help against the local magistrate (Soto), who had seized the company's Gaudalupe hacienda, does not appear in the letter book, although referred to in a later letter (December 5, 1867) from the same to the same, as follows (279):

"I take the opportunity of our mutual friend, J. G. Rice, Esq., going to Durango, to write to you *again* in case my letter of the 26th Nov'r., should not have reached you."

Then comes a statement of the serious consequences to the company if Soto should be allowed to retain possession of the premises and complete the "tahonas" he had commenced to put up (279). This letter of November 26th does not appear in the copy book.

All the missing letters that have been identified are favorable to the company, and the copies of all of those which

were written at Mazatlan, having been pasted in on separate sheets, could have been removed without breaking the continuity of the paging, for the inserted sheets are not paged.

Granger, who had possession or control of the book from March, 1868, till December 25, 1877, when he delivered it to Señor Gaona (576), had a motive to remove whatever was favorable to the company. But whether these copies were abstracted from the book or never inserted in it, it is none the less imperfect and misleading. On this point Mr. Chief Justice Nott observed (844):

"As to the action of the Secretary of State upon the same question (of Mexico's liability) in 1879, it is sufficient to say that substantially everything which is in the case now was before him then. That is to say, the letter book of the company's agents and the letters of the treasurer in New York were before him; and they were then untainted by the suspicion of *having been tampered with or of being imperfect or incomplete.*"

Again (847):

"Intrinsic and extrinsic evidence shows that the letter book was incomplete. That is to say, internally there are marks of mutilation, and the correspondence shows that letters were written and received and answered which do not appear to be in the book; and these missing letters coincide more or less with the mutilations in the book.

"The same thing is true of the letters from Garth in New York to Exall in Tayoltita. That is to say, it is manifest that these are not all of the letters which Garth wrote and which Exall received.

"The books of account are also incomplete. The most important, the journal, is but a fragment of the entire book, while the other books of the same age and manufacture, and left in the same custody, are in good order. The ore book showing by daily record the quantities of ore excavated is not produced or accounted for.

"It appears that all the books and papers of the company were left in the possession of and under the control of James

Granger* at the company's offices in Tayoltita, by Exall, the superintendent, when he left the mines in 1868. When the government of Mexico produced the letter book and letters of Garth and Exall in 1878, no evidence was given to account for them to show the condition in which they were when received, to show in whose custody they had been, to explain why they had not been brought before the International commission."

Some of the letters in the copy book are marked "Not sent," and some others, addressed to Garth, he has no recollection of ever receiving (706, 729, 733). It is clear that Granger's letter of November 8, 1867, informing Garth of a report that Exall had been waylaid and robbed on his way to Durango with silver, could not have been sent, for Exall had returned in safety by the 10th to Tayoltita, and he wrote to Garth from Mazatlan on the 17th by the steamer on which Granger's letter of the 8th would have gone. Exall would not have been likely to let such a letter as that go, and Garth would have been sure to remember its receipt if he had ever received it. He testified that he had no recollection of receiving it (Sen. Rep., 2705, p. 131).

The Court of Claims agreed with Mr. Chief Justice Nott that the letter book was incomplete, but nevertheless, and notwithstanding the authorities cited (821, 822) and its own conclusion that by due diligence the book could have been produced at the original trial, admitted it for the purpose

* In August, 1868, five months after Exall left Tayoltita, Granger had possession of the letter book and copied in it his letter of the 12th of that month to the tax collector (282), written within five days after his pretended extension of the lease of the company's lower hacienda to his father-in-law, the local magistrate, Soto (132), who had illegally seized the same property in the previous October (278, 279), and who took possession of the company's chief hacienda after Exall's departure, and was still living there with his family and working the company's mines in 1870 (52, answer 4; 165, answer 17; 179, 185). As to Granger's relations to Soto and the purpose of the letter to the tax collector, see Brief, pages 195, 196.

of showing the general situation for two years and more at the mines. The court says (825):

"The fact that some letters may be missing does not destroy the legal effect of others which appear in the book and which are shown to be the letters of the person purporting to have written them. * * * The letters are introduced and admitted upon the theory that they are representations or admissions of the company. The rule is as to admissions that the whole admission is to be taken together, and the whole must be considered in determining its effect, but letters written at different times and complete in themselves cannot be considered as a continuous admission the force of which is destroyed by the omission of part."

As the letter book has so much in it that substantiates the company's claim and justifies the umpire's award, we shall spend no further time in arguing against its admissibility, and shall content ourselves with showing by three examples that "the omission of part" *does* destroy its force "as a continuous admission." We contended below that the letter book containing statements by way of narrative from the company's superintendents to the home office could not be considered as admissions at all, and so the authorities cited and the learned chief justice seemed to hold; but, waiving this point, it is clear that the omission of Colonel De Lagnel's letter of May, 1866, notifying Mr. Garth of the draft for $15,000, makes the letter book misleading on the material point of the company's expenditures, and this omission did, in fact, mislead the Mexican agent, General Slaughter, who accordingly, in his so-called "petition" to Congress, stated the amount of Colonel De Lagnel's drafts incorrectly (774). The omission of Colonel De Lagnel's report of the assay of the company's ores at La Puerta makes the letter book defective and misleading in respect of the evidence which the company had in regard to the value of its mines, and the omission of his report of "the armed demonstration" prevents the letter book from showing, as it otherwise would show,

the hostility of the Mexican miners and their readiness, in the earlier part of the company's operations, to use force and violence against its officers. These illustrations could be greatly multiplied, but it is not considered necessary to go into further particulars on this point.

The last letter in the copy book from Exall to the home office, prior to his departure, is dated January 24, 1868. Now, what happened to him, as shown by the evidence, after that date? He had been released from his imprisonment in the pest-house about two weeks previously. But he was subsequently summoned by Perez—the same judge who had imprisoned him—and was berated and threatened at the court-room in the presence of the Mexican laborers, as testified by Granger (48):

"A few weeks after this occurrence (the imprisonment in the pest-house) on a Saturday, the superintendent Exall received from said Judge Perez an order directing him to attend at his 'juez-gado' (court-room) and the same evening at seven (7) o'clock Mr. Exall in obedience to said order went to the court-room, where he found assembled a large number of the employés of La Abra Company's mines, and others, and in their presence the said judge proceeded to lecture said Exall upon the manner in which the business of the said company should be carried on, and he threatened that if the superintendent or company did not work in the mode and manner to please the authorities, they should be deprived of their property and forced to flee the country; *all of which was said in my hearing.*"

A meeting of that kind was of course notorious, and probably for that reason the Mexican government never attempted to disprove this part of Granger's testimony, although Perez himself was accessible and could have been examined. Among the company's workmen was Matias Avalos, who testified (52, answer to question 6) that he had "heard Nicanor Perez, juez conciliador, say he would drive the company out of Tayoltita and out of the country." Cryder also testified (69) that he heard Perez say "he would

run that La Abra Silver Mining Company out of Mexico. * * * This was in February, 1868. *I afterwards told Mr. Exall of the threats of the juez.*"

Cryder testified further (69, foot of page):

"I also heard Macario Olvera, the prefect of the district of San Dimas at that time, February or March, 1868, say that La Abra Company could not stay in that district; that it would be impossible for them to do so."

Cryder then mentions the threats that were made, and adds (70):

"My suspicions were at once aroused that Superintendent Exall might be in great danger and that other 'accidents' might happen, and *I told Mr. Exall* the first time I saw him after this conversation I have related with said prefect."

As to Olvera's relations with Soto and their hostility and threats against the company, Loaiza testified (73):

"He (Olvera) was a great friend of Judge Soto, and I have heard him tell Olvera, the prefect, that they would never allow the Abra * * * Company to renew their mining operations in the district."

This animosity of the local officials was so notorious and the proof of it before the commission so conclusive that the Mexican authorities, when they imprisoned Loaiza and extorted a deposition from him a year or more after the commission had adjourned (although they could have re-examined him at any time during the five years the commission was in session after his original deposition was taken), did not question him on this point at all. The finding of the umpire on this point is of the most positive kind (8).

Exall, being thus in fear of his life, appealed to the authorities at Durango. This was shortly before he left Tayoltita. The fact of this appeal was proved by the Mexican government in its second examination of Granger, who, after testifying to Exall's imprisonment, said (119):

"That he is aware that he presented himself before the civil authorities of Durango, but does not know what answer he might have received."

Although Granger had gone over to the Mexican side, he stuck to the fact of Exall's imprisonment and appeal, and in his third examination by Mexico he said (129):

"That *he knew* the superintendent had complained to the governor of Durango, but that he does not know with what result."

Now, there is an entry in one of the company's books (the books which were withheld by the Mexican government from 1878 until it was compelled to produce them in this case) showing "expenses to *Durango*," under date of *February 21, 1868*, "$16.00" (94).

Thus this new evidence by suggesting Exall's presence in Durango shortly before he abandoned the company's property and business at Tayoltita, corroborates the testimony before the commission to the effect that he had appealed for protection to the governor.

The letter copied in the book next after that of January 24 is Exall's famous "autograph" of February 26, 1868, on which so much reliance has been placed by the Mexican government; but, waiving for the moment Exall's explanation of the circumstances under which it was written, what is there in it incompatible with the idea that having again failed in his efforts to obtain protection or redress, and being in fear of his liberty and his life, he determined to abandon the enterprise and return to New York?

He says to Granger in that letter (281):

"As circumstances are of such a nature as to *compel* me to leave for San Francisco and probably for New York to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property."

What were the circumstances that *compelled* him to leave for *San Francisco and probably for New York?* It is evident, from his letter of March 15, 1868, written to Granger at Mazatlan (322, 323), that he did not leave Tayoltita on February 26. In his explanatory affidavit of May 1, 1878, he says (670):

"I reconsidered my decision to go at that time and concluded that I ought to remain longer before going and await still more alarming indications from the people and authorities, and the paper I have referred to was never delivered to Granger. Whether I destroyed it or left it among the loose and discarded papers at the hacienda of the company I do not remember. I remained there some time afterward, but I waited too long and the explosion which I believed to be several months distant, came unexpectedly and the expulsion of the company and my abrupt departure to save myself from personal harm, and the complete abandonment of everything belonging to the company took place as I have stated in my depositions."

The fact that he was in fear of his life from causes for which the Mexican government was responsible, operating shortly before and up to the time of his departure, did not depend on his own testimony before the commission, but was proved to the satisfaction of the United States commissioner and the umpire by other witnesses, who are not only unimpeached, but corroborated by the new evidence in the case. On his return to New York he told Garth and Ely why he had come home and why he had abandoned the company's property at Tayoltita, as appears from their testimony in this suit. Mr. Ely, the original attorney of the company in New York, whose deposition as to its organization was before the commission (174–176), testified in this suit as to Exall's statement to him of the reasons why he left Tayoltita as follows (655, 656):

"In May, 1868, Mr. Exall came to my office in the city of New York. After shaking hands with him I said I was surprised to see him here; that I supposed he was in Mexico

making silver bricks for La Abra Company, and he stated that he had been compelled to skip out between two days. I think that is the very expression he used, 'skip out between two days.' And I remarked, 'I hoped he had not been committing any crime down there, and had to leave the country in that way.' He said he got alarmed for his personal safety, and was fearful of what might happen to him, and he went out in that way as the safest way to go. I asked him what was the danger, what was the trouble. Well, his reply was 'that the local authorities down there were a very bad lot; that they were arbitrary, and if they got down on a man they would do about what they liked with him, and there was not much, if any, chance for redress.'"

The entire statement as made by Mr. Exall to Mr. Ely, from which this is taken, and the circumstances under which it was made, should be carefully considered.

Mr. Garth, who is a man of the highest character and exceedingly careful of what he says, said, referring to Exall's return (706):

"He came into my office unexpectedly to me, and stated that he had been so interfered with by the officers or magistrates that he was unable to conduct business, and that he had himself been imprisoned, and he said to me that he was imprisoned for about two weeks, and that he feared for his life. He was afraid of his being assassinated, or being killed, and that he had to leave. That was the substance of his statement to me."

For Mr. Garth's further statements in his direct and cross examination on this point, and on the reasons why somebody else was not sent down to Tayoltita to look after the company's property, see Record, 708, 712, 725, 726.

This corroborates Exall's statement in his first deposition for the company (32):

"Question number nine. Why was nothing further done by you and by said company?

"Ans. Because I did not dare to return and resume mining operations there. I was and am satisfied that I could not do so with safety to the life of myself or my workmen, or with safety to the property of said company. Such was the hostile feeling or prejudice against said company as citizens of the United States, and further prosecution by said company of mining operations there, both on the part of the citizens and the local and national authorities of the Mexican Republic, and the violent acts resulting from that feeling and prejudice, being encouraged and connived at by said authorities, as I have stated. And I returned to the State of New York, and advised said company that it was useless to attempt any further working of said mines, and gave them the facts above stated as my reason for that advice; and I understand that said company was so advised by others who were citizens of Mexico."

In his letter of March 15, written at Mazatlan, to Granger, Exall said:

"I wrote you by Rice and said *everything I thought necessary.*"

Why did not Granger produce that letter? He produced the five others which Exall wrote to him after his departure. *Omnia presumuntur contra spoliatorem.*

It is clear that Granger did not regard Exall's letter of February 26 as authority to him to represent the company. He used the letter for his own and Soto's purposes, but he never wrote a line to the company or received a line from them. If he had not been in the plot with the local officials, he would have corresponded with the company and copied his letters in the letter book. He would also have produced letters from the company, if he had received any, showing his authority to act for them, for this would have been fatal to the company's case and would have assured him the promised reward.

(*b.*) Another sign that Granger tampered with the books and papers of the company before delivering them to the Mexican government is the fact that Garth's letter of September 30,

1867, to which he refers in his letter of October 10, to Exall, is missing. This must have been in reply to Exall's of July 13 and 14, in which he had informed Garth that the officials were getting daily more troublesome, and that their demands were all foolish and unjust (272).

In his letter of October 10 to Exall, Garth says:

"Since *ours of 30th September* we have yours of 5th August from Mazatlan" (286).

In his letter of August 10 Garth acknowledges Exall's of June 11, the one that is not found in the copy book.

It is clear that Garth's missing letter of September 30 was written in reply to Exall's of July 13 and 14, and must have taken notice of Exall's complaint of the Mexican officials. The court seems to have overlooked the reference in Garth's letter of October 10 to his letter of September 30, and to have assumed, as the chairman of the Senate subcommittee did, that Garth had not written to Exall between August 10 and October 10. The chairman said in examining Garth:

"You let the matter rest until the 10th of October before you wrote any more."

And again:

"Did you feel any uneasiness about your property out there between the 10th of August and the 10th of October (Senate Report No. 2705, p. 164)?"

The court alludes to this as follows (828):

"On page 164 of that examination, in answer to a question by the chairman of the committee, Garth said in substance that he did not recollect of having written to Exall between the 10th of August and the 10th of October, 1867."

Of course, Garth could not recollect positively, after a lapse of over twenty years, that he had written to Exall between these two dates, and as the letter of September 30 had

not been produced by Granger, it looked as if Garth had not written to Exall during all that time. But if the chairman or the court had observed the opening sentence of Garth's letter of October 10 they would have seen that he had written to Exall on September 30, and all of their theories based on the contrary assumption would have been overthrown. So dangerous is it to assail an award on such assumptions after such a lapse of time. It appears from Exall's letter of November 17 that he received Garth's letter of September 30 (276).

Judging by the number and dates of Garth's earlier letters to Exall, there were probably other letters of Garth's to Exall between August 10 and October 10, which were withheld by Granger because they followed up the subject of the letter of August 10, and dealt with the interferences of the officials and the want of protection at the mines. In any event, this new evidence—Garth's letter of August 10, written, as it shows on its face, after the receipt of Exall's of June 11—proves that the company had heard that Americans and other foreigners would not be protected in their persons and rights in Mexico, and that the company might be compelled to abandon its property; furthermore, that, in view of the situation, Garth instructed Exall "to take all necessary and legal measures by protest and otherwise to secure our claim against the Government." Garth adds:

"Mr. Rice, no doubt, will be of essential service to you in any measure of this sort, and we would advise you to consult freely with him" (286).

This new evidence, produced by Mexico, confirms that part of Chavarria's testimony before the commission in which he said that he had been "employed by Mr. Rice, of California, as Exall's lawyer," and as such had "repeatedly solicited from the State government protection for the Abra Company to suppress the robberies and outrages which the

company were experiencing at Tayoltita, but all to no purpose," etc., etc. (83). With that letter in evidence, written months before the abandonment and nearly three years before the company's claim was presented to the international commission, Chavarria's testimony, which the umpire regarded as vital to the case,* is corroborated in the most significant and conclusive manner; and so is Exall's as to his employment of Chavarria (158).

(*c.*) Exall's letters written to Granger after the abandonment, to which reference has already been made, were excluded by the court. They do not show that the company exercised any acts of ownership after Exall's return to New York or had any information from him that he had left Granger in charge; and, as already observed, they demonstrate the falsity of Granger's letter of August 12 to the tax collector on which the complainant has relied to prove that the company was still in possession at that time.

(*d.*) The depositions of Loaiza and the Gamboa Brothers are inconsistent and show nothing with certainty, except the nefariousness of the methods by which Mexico has sought to impeach the award (Brief, 209–216).

(*e.*) Sundell's depositions and testimony are reviewed in the Brief, 221–249, where the points in which it strengthens the testimony for the company are stated.

(*f.*) These depositions were taken *ex parte* at San Dimas by the Mexican government May 30, 1877, to show that Judge Quiroz did not give Captain Dahlgren permission to remove a portion of the company's machinery, as stated in the captain's deposition for the company. Copies of Dahlgren's petition and the judge's order are produced, the latter

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* Referring to Chavarria's testimony, the umpire said in rendering his award (8):

"It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities (at Tayoltita and San Dimas) and finding his efforts in vain he appealed through a lawyer of high standing to the highest authorities in the State who declined to interfere in the matter."

of which shows that Dahlgren was not forbidden to take what he wanted, but was simply told that if he took it, it would be "under his own responsibility."

Guitierez, Gurrola, and Delgado deposed that Granger disposed of certain articles belonging to the company, and that Dahlgren carried off parts of the machinery from the company's mill without permission after Exall had left Tayoltita.

This in no way affects the testimony for the company before the commission.

(*g*.) All of these annual reports, except 1877, were on file and accessible while the commission was in session, and they all corroborate the testimony for the company at the original trial. (See Baldwin's examination on this subject in this suit, 678–680; also Ely's, 653, 654.)

(*h*.) The testimony taken by the Senate subcommittee in 1889 was very favorable to the company. It is summarized in Senator Brown's minority report, in the conclusion of which—that La Abra award should stand and be executed in full faith—the chairman of the committee (Senator Sherman) concurred (452, 453). Extracts from this testimony and Senator Brown's report are printed in the appendix to the Brief, XXVIII–LXXIII.

One of the most remarkable things brought out in the Senate investigation was the fact that Mexico had concealed its possession of the company's books and papers from its own attorneys so that General Foster and Mr. Lines were able to assure the sub-committee that they could not get them and did not know anything about them (Senate report No. 2705, pp. 47, 48, 66; see also Brief, p. 15, note).

Another remarkable fact was developed by the Mexican government in Elder's testimony to the effect that the richest of his ores at his mine, near the company's, were stolen, and that the local magistrate did not dare, on peril of his safety, to interfere for Mr. Elder's protection (Sen. Rep. No. 2705, p. 568, 569).

This same witness also testified that when subsequently he was in the company's employ the local magistrates insisted that the company should give employment to more of the unemployed workmen (*ibid.*, 565, 566), and that he was frequently taken at the point of the bayonet from the company's mill, when it was running, to act as interpreter a mile away (*ibid*, 598).

The substantial truthfulness of Dahlgren's original deposition for the company and the falsity of his subsequent testimony on behalf of Mexico were proved by a Mexican (Danglada) who corroborated ex-United States Consul Sisson (Brief, appendix III, p. XL).

One of Mexico's most serious charges against the company was completely disproved by Elder, who had been summoned to prove it by the Mexican government (*ibid.*, appendix V, pp. LVIII, LIX).

(*i.*) The testimony taken in this suit on behalf of the complainant in no way impeaches or weakens the evidence on which the United States commissioner and the umpire relied in allowing the company's claim.

De Laguel proves the defective character of the letter book, the hostility of the Mexicans to the company, the pernicious character of the local magistrate, Soto, his hatred of the company, his interests hostile to it, the exaction of "double duties" by the "authorities," and the detention of the company's trains to enforce payment. (Brief, 261–279.)

Sundell's and Torres' testimony is in some important respects favorable to the company, and where it is unfavorable it is shown to be false (Brief, 221–261).

Gaona's testimony is fatal to Mexico's case, showing as it does her iniquitous contract with Granger, her acceptance from him of his selections from the company's records without any verification or explanation on his part, and her failure to prosecute her own eminent citizens, Chavarria or Galan, for perjury, although she alleged that they had perjured themselves, and she was seeking relief on that ground,

and there was no legal impediment to their prosecution (Brief, 187–193).

As to the evidence taken in this suit for the company, it may be said that it shows conclusively, not that all the statements in the company's memorial were true, but that the evidence on which the United States commissioner and the umpire relied in allowing the claim was worthy of trust. It is remarkable that after such a lapse of time so much affirmative proof could be obtained, such as Bishop Potter's and others' testimony to the high character of Mr. Collins, long since dead (675, 711, 736, 737); Mr. Cushing's original acknowledgment of the company's offer to submit its witnesses to cross-examination by him as agent for the Mexican government (653, 668); ex-United States Consul Sisson's refutation of Dahlgren, Loaiza, and Gamboa (687–689, 691, 692); Mr. Birmingham's statement of the results of tunneling Candelaria (Brief, 299, 300); and Mr. Secretary Fish's circular to the effect that the United States did not vouch for any of the claims either on the law or the facts, but left them entirely to the examination and decision of the commission (742, 743).

The case was thrice argued before the Court of Claims, once on demurrer and twice on the merits. It is clear from the opinion of the majority of the judges that they would have felt bound to dismiss the bill if they had felt free to apply the ordinary rules of law to the case, and, as it was, they did not find that the testimony of a single witness necessary to establish Mexico's liability was perjured or false or corruptly obtained. They concluded that the award must have been obtained by fraud, because the evidence showed that the company was short of funds towards the close of its operations and disappointed at the quality of its ores. But the poverty of the company was due to the want of protection—that is, it could have had all the money it needed to tunnel its mines as the Candelaria was afterwards tunneled with such wonderful success if it had not been for the arbitrary and illegal orders

of the local magistrates, Mora and Soto, and the subsequent interferences and outrages that made the company's continuance at Tayoltita impossible (732, 733).* The company's poverty does not explain the total abandonment of its buildings, machinery, and stores, nor the undisputed fact that the local Mexican magistrate who, in October, 1867, had illegally

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* In connection with a description of the intended tunnel Garth testified to the company's ability to get all the money it wanted before it was apparent that life and property were insecure at Tayoltita. What follows is from his testimony in the Senate investigation (Rep. 2705, p. 148):

"Q. Do you mean a tunnel to strike the vein lower? A. Yes; it was a plan of Weidner.

"Q. Did that apply to the La Abra alone? A. Yes; that was mainly designed, but in the cutting of this adit level, as it was called, it was designed to strike greatly below the lowest workings where the great La Abra mine had been worked.

"Q. So as to drain off the water, if there should be any, and carry out the ore instead of carrying it upon the backs of the men? A. Yes; that was the plan, and from the appearance that was shown to me that seemed to be practicable; and it would cut most of the mines, the La Luz, the El Cristo, and others, far lower down than they had been worked at all.

"By the CHAIRMAN: Q. Did Exall do any work on that tunnel? A. I don't think any of them did. *but that was the design when I left.* Bartholow expected to do so, but, as I say, the thing had cost much more money than we anticipated. It was supposed when we went into this thing that $150,000 would be all the money needed to do that thing by these estimates. *We could have raised twice as much when this thing was gone into* if it had been necessary, but particularly Mr. Bartholow was very positive that he would not want any more, and objected to our making an effort to get any more. At the time that this business was done, it was done by some friends, both of Mr. Bartholow, who were in the West, and of myself, in New York there, and the thing was honestly and fairly gone into as a business operation."

What follows is from Mr. Garth's testimony in this suit (732, 733):

"Question. Now, I want to ask you whether you would have had any trouble in raising all the money you wanted to carry on your mining operations at Tayoltita if you had received assurance that life and property were safe down there?

"Answer. I should think it would not have been a difficult matter to get the necessary funds in that event.

"Question. What effect, if any, did the statement in Exall's letters of July 13 and 14 that the officials were daily becoming more troublesome, and that their demands were foolish and unjust, have upon your efforts to raise money?

"Answer. *They had the effect of preventing any further advances in that direction.*"

seized one of the company's haciendas, remained in possession of all the company's property, and was busy with the reduction of its ores from the time of Exall's departure in March, 1868, until General Adams arrived at Tayoltita in May, 1870, to obtain testimony in support of the company's claim.

Point IV.

THE UNITED STATES HAS NOT SHOWN BY THE EVIDENCE THAT THE WHOLE "SUM" AWARDED WAS PROCURED BY FRAUD, &c.

It is not disputed that the company purchased and owned these mining properties and erected expensive machinery and engaged in working the mines.

The amount of the award was arrived at by the umpire as follows:

He determined from the evidence before him what amount the company actually expended for the purchase of the mines, machinery, &c., and stated it thus:

From subscriptions and sales of stock..... ...	$235,000 00
Lent and advanced.....	64,291 06
Salaries and expenses....	42,500 00
	$341,791 06

To that is added:

Amount derived from reduced ores.....	17,000 00
Ores extracted from the mines and deposited at the mill when the mines were abandoned.	100,000 00
Aggregate.....	$458,791 06

upon which interest was allowed by the umpire.

This makes it necessary to consider the evidence as to the several items of which the award is composed.

As to the first three of the above items, aggregating $341,791.06, the bill does not charge fraud in the sense that no expenditure was made. It charges that the amount expended was exaggerated and was much less than $200,000 (R., p. 18).

It is therefore apparent that some part of this was properly allowed.

And this remits us to the evidence to ascertain whether the United States have shown that this amount was exaggerated by fraud and to what extent.

THE AWARD CANNOT BE SET ASIDE BECAUSE THERE WAS A CONFLICT OF EVIDENCE BEFORE THE UMPIRE OR BECAUSE A CONFLICT HAS BEEN PRODUCED BY EVIDENCE ADDUCED SINCE THE AWARD WAS MADE. THE QUESTION IS WHETHER THE UMPIRE HAD BEFORE HIM SUFFICIENT EVIDENCE TO SUPPORT THE AWARD IN THIS RESPECT THAT HAS NOT NOW BEEN SHOWN TO BE PERJURED.

The duty of the umpire required him to weigh the evidence.

EVIDENCE BEFORE THE UMPIRE.

He held that the claimants should be reimbursed the amount expended.

He arrived at that amount by the testimony of George C. Collins (R., p. 38).

He adopted Collins' figures.

Alfred A. Green testified that the mines and buildings cost, probably, $300,000 (p. 37).

Sloan, a witness for Mexico (p. 120), testified that the company had expended $303,000.

Granger (p. 119), called for Mexico, testified that company had expended $303,000.

Difference between gold and currency. Brief, pp. 356, 357.

For the facts as to item 4, $17,000, and item 5, $100,000, see Brief, pp. 72–75, 76–79.

Therefore, as to these items, there is not now evidence to show that the umpire was misled by perjured testimony.

Conclusion.

(1.) In this suit there is an attempt to review and reverse the action of the President in a matter of international concern exclusively within his control.

Mexico's *liability* to La Abra Company was decided, after full investigation, by President Hayes (Brief, pp. 50–60). This decision is not examinable by the courts. It is conclusive on both the legislative and the judicial branch of the Government (Brief, p. 64 *et seq.*).

(2.) The award of the umpire must be sustained, because under the treaty it was final and conclusive, and its integrity cannot be inquired into collaterally. The complainant below admits that this award was beyond the powers of the court's decree, and the Court of Claims only found itself at liberty to pass judgment upon the award when it brushed aside the rules applicable to equity suits (Brief, pp. 87–92).

(3.) The Court of Claims found that the Mexican government could, by the exercise of due diligence, have obtained and produced before the International Commission the evidence which it secured after its adjournment (R., pp. 841, 847, 848), but though it was required by the act "in *all* respects to proceed in said cause according to law," it held that the question of Mexico's diligence was not before it.

Though reasonable diligence must appear before a court of equity lends its aid to a complainant, the Court of Claims excused it in this suit because, as it held, Congress by the act of 1892 had waived the necessity of such proof. Thus the company was brought *in invitum* into a judicial forum at the suit of its government, which, suing for the use of

Mexico, was relieved of a duty that equity inexorably demands of litigants (R., p. 818; Brief, p. 113).

As the new evidence could have been obtained by due diligence during the original trial, the bill of the government should be dismissed (Brief, pp. 114, 115).

(4.) The alleged newly discovered evidence relates solely to issues passed upon by the International Commission in examining the company's claim.

This was admitted below (Brief, p. 127).

The question of fraud in procuring evidence and the question as to the cause of the abandonment of the company's property in Mexico were pressed upon the attention of the commissioners, and the controversies thereon, with all the evidence, arguments, and opinions, went to the umpire, who rendered a deliberate decision thereon (Brief, pp. 128, 129).

This court will not set aside this judgment for any matter "which was actually presented and considered" in the judgment itself. "In the exercise of equity powers" the Court of Claims ought to have applied the rules of chancery to this merely cumulative evidence relating to a disputed matter already actually presented to and considered by a competent tribunal, and have dismissed the bill, for it held, and properly held, that Mexico was the real plaintiff in this proceeding (Brief, pp. 130–137). There is no pretense that the kind of fraud for which equity will grant relief against a judgment has been proved or even intimated in this case.

(5.) The bill in this suit seeks to deprive this company of its right of property in the umpire's award, which this Government by treaty stipulation, having the force of law, had agreed to consider conclusive, and to which by the same instrument it had declared it would give "full effect."

The Government of the United States received this award from Mexico in trust for this company, whose exclusive property it was. To dispose of it directly by act of Congress or to subject it to judicial disposition by means of statutory

directions impairs a vested right. This legislative interference cannot be tolerated by this court. Both parties to the arbitration "surrendered to a common arbiter, without reserve, their entire jurisdiction in the premises" (Brief, p. 151), and except by their joint act and for good cause the award cannot be disturbed (Brief, pp. 138–179).

JEREMIAH M. WILSON,
Attorney for La Abra Silver Mining Company.

Supreme Court of the United States.

LA ABRA SILVER MINING COMPANY, Appellant,
vs.
THE UNITED STATES.
No. 498.

Appeal from the Court of Claims.

Motion by the Appellant that the Constitutional objections to the Jurisdictional Act be first heard and determined.

Comes now the appellant, by Crammond Kennedy, its solicitor and of counsel, and moves the Court that the appeal in this cause be first heard on the questions involving the constitutionality of the act of December 28, 1892 (27 Stats., 409), under which these proceedings were brought by Mr. Attorney-General for the United States in the Court of Claims.

Among the constitutional objections raised by the respondent's demurrer below was the following:

> "I. That by the Constitution and laws of the United States the subject-matter of the complainant's suit is not within the jurisdiction of this honorable Court or of any court of the United States, but is within the final and exclusive control of the Executive department of the Government of the United States."

The same objection is stated more at large in the second paragraph of the respondent's demurrer, as follows, (Record, 311, 312):

> "II. That the question whether the award which was rendered in favor of the defendant, La Abra Silver Mining Company, by Sir Edward Thornton, as umpire of the United States and Mexican Claims Commission, under the treaty of July 4, 1868, between the United States and Mexico, was obtained in whole or part by fraud; and the question whether the whole or any part of the money received and remaining undistributed by the Secretary of State on account of the said award should be returned by the President of the United States to the Government of Mexico, are not, nor is either of them competent, fit, or proper to be considered and finally determined by this honorable Court, or by any municipal court of either of the two sovereign parties to the said treaty, but that the said questions are, and each of them is, of diplomatic or political nature and cognizance, and that Congress has no power to authorize this honorable Court, or any court of the United States, to consider and finally determine the said questions, or either of them, as against the powers and discretion appertaining to the Executive department of the Government of the United States."

It is admitted by the appellant that Congress, at the request or suggestion of the President, could authorize the Court of Claims to make an investigation of the charges and proofs submitted by the Mexican Government in this case, and to report its findings of fact and law to the President for his information and assistance in making any final disposition of the case which he might choose to make in the exercise of his constitutional authority in the premises; but the appellant denies that it is within the power of Congress to invest the Court of Claims with "full jurisdiction" to "determine" and

"finally adjudge" the questions submitted to the Court in the jurisdictional act, so as to bind the President and compel the substitution of the Court's opinion for his own, although, for example, he might believe that the dissenting opinion of the learned Chief Justice was more in consonance with the right of the matter, and ought to prevail.

That Congress intended to confer judicial power, in the sense of the Constitution, upon the Court of Claims in this case, appears not only from the terms employed in the jurisdictional act, but also from the provision for an appeal to this Court. That the appellee so understands the act appears from Mr. Attorney-General's averment in the XIVth paragraph of the bill of complaint (Record, 15):

> "And said law conferred full jurisdiction upon this honorable Court to hear and determine such suit, and to make all interlocutory and final decrees therein, and to enforce the same by injunction or any proper final process."

Mr. Attorney-General also averred in the bill of complaint (Record, 21, 22)—

> "That it is the right and duty of your orator (the United States) to have the facts relating to said claim and award inquired of by your honorable Court, and if it shall be adjudged by your honorable Court that the said award was obtained through fraud * * * to return the proceeds of said award to the said Republic of Mexico."

It was argued by the respondent below that if the decree of the Court of Claims binds and coerces the President, it is an encroachment upon his constitutional power and responsibility in a matter which belongs to the foreign affairs of the United States, and is, therefore,

of diplomatic cognizance and executive discretion, while if the opinion and decree of the Court of Claims are only advisory, no appeal lies to this Court.

Another constitutional objection to the bill is stated in the respondent's demurrer, as follows (Record, 314, 315):

> "That said act of Congress is inoperative and void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval which it ever received being on the 28th of December, A. D. 1892, when Congress was not in session, both Houses of Congress having adjourned (by concurrent resolution) on the 22d of December, A. D. 1892, to the 4th of January, A. D. 1893."

Other objections were taken to the jurisdictional act in the demurrer and answer below, but they need not be restated here. Only one more constitutional objection will be suggested for the purpose of this motion.

No case arising under the Constitution or laws of the United States is submitted to the Court by the jurisdictional act, but it simply puts a particular question to the Court, *i. e.*, whether the award was obtained from the United States Commissioner and Umpire by fraud of the company, its agents, attorneys, or assigns; and while the United States is plaintiff, no power is given to the Court to render judgment for or against the plaintiff, or to retry the claim on the merits and increase or reduce the award. The award can not be increased in any event, and it can not be diminished except for fraud in obtaining the whole or any severable part of it from the Commission. And the jurisdictional act itself pronounces the judgment, conditioned on the findings of the Court of Claims—a judgment which is not a judgment, because it could not be enforced, and there

might be the best of reasons, in the estimation of the President, why he should not return the money to Mexico. This conditional "judgment" prescribed by the jurisdictional act is as follows:

> "The President of the United States is hereby authorized to return to the said Government any moneys paid by the Government of Mexico on account of said award remaining in the custody of the United States that has not been heretofore distributed to said La Abra Silver Mining Company or its successors and assigns which such Court shall decide that such persons are not entitled in justice and equity to receive out of said fund."

It is contended that this phraseology shows on its face that the subject-matter of the so-called "suit" is neither within the judicial power of the Court nor the legislative power of Congress.

The jurisdictional questions raised by the demurrer and reiterated in the XIVth paragraph of the answer (Record, 454, 455) should be argued and decided before the case is heard on the merits, because (this being a suit in equity) all the evidence is brought up by the appeal, and much time and attention will be required for a proper discussion and consideration of the questions of fact and law involved in the case. There are four sets of evidence to be examined: (1) what was before the Mixed Commission *pro* and *con*. (Record, 9–195); (2) what was submitted *ex parte* by the Mexican Government in support of its charges against the award in the year 1878 (Record, 198–346); (3) what was taken in the Senate investigation in the year 1888–89, as to the use of which on this appeal a stipulation has been signed by the parties (Record, 854); and (4) what has been taken in this suit (Record, 461–802). There are also questions of the admissibility of parts of this evidence.

Referring to this evidence and these questions, the Court of Claims says, in the majority opinion on the merits (Record, 838):

> "This being a proceeding in equity, this Court is not called upon to settle the facts by the finding of ultimate facts for the consideration of the Supreme Court, but the whole record is transmitted to that Court, and the case is to be determined in the Supreme Court upon the law as it shall be adjudged and the facts as they shall be found by the decision of the Supreme Court."

This motion to divide the case as it was divided below and to have the jurisdictional questions heard and determined in the first instance, is made in consideration of the value of the time of the Court and of the impropriety of entering upon a long and laborious hearing on the merits, which might prove to have been unnecessary.

> "The question of jurisdiction * * * is always to be decided before the Court can properly inquire into the merits." (*Great West Ins. Co.* v. *U. S.*, 112 U. S., 197.)

To the Honorable Solicitor-General of the United States and the Honorable William A. Maury, special assistant to the Attorney-General:

Please take notice that the foregoing motion will be made in the Supreme Court of the United States at the opening of the said Court on Monday, January 17, 1898, or as soon thereafter as counsel can be heard.

Due and timely service of copies of the foregoing motion is hereby admitted this day of January, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

La Abra Silver Mining Company, Appellant, vs. The United States.	No. 29.

PETITION FOR A REHEARING.

Come now the appellants by their counsel and move the court that they may be heard again upon the facts, and especially upon the following questions:

I. What was in fact the decision which was made by President Hayes in the investigation of Mexico's charges and evidence (old and new) in respect of La Abra award, in response to the request contained in the fifth section of the act of June 18, 1878; and is it the intention of the court to set this Executive decision aside and condemn the payments which were accordingly made to the Company and its assigns by the President of the United States?

II. On what evidence was the Umpire's decision founded, and what material part of it, if any, has been surcharged and falsified by the new evidence? This

will involve a renewed examination of the letters on which the court has relied in affirming the judgment of the Court of Claims.

Before proceeding to discuss these questions counsel beg leave to make some observations on the history of the claim as given in the opinion of the court, for, as stated in that opinion, it is "in the light of this history of the claim" that the court proceeds "to the consideration of such of the principal questions presented in argument as are essential to the disposition of the case."

The importance of the view which the court takes of the history of the claim cannot be better stated than it has been in the court's own language. If the principal questions have been considered "in the light of this history of the claim" it is of the highest importance that this "light" should be unobscured.

The court seems to accept the view so persistently presented by Mexico's counsel from the beginning, that the United States vouched for La Abra Company's claim, and became responsible for it by transmitting it to the Commission, although in the opinion it is observed that Secretary Fish issued a circular on the 23d day of February, 1870, in which he took care to say that by referring the claims of corporations and citizens of the United States to the Commission, the Government of the United States thereby expressed no opinion either as to the merits of the claims presented, or as to the principles of law to be invoked in their support, and that the responsibility of deciding questions of fact and law rested with the Commissioners.[1]

Notwithstanding this express disavowal by the Government, which could not have been expressed in clearer or stronger terms, the court cites Mr. Chief Justice

[1] Opinion, 2.

Waite's remark from *Frelinghuysen* v. *Key*, that the claimants "induced the United States to assume the responsibility of seeking redress for injuries they claimed to have sustained by the conduct of Mexico," and that "claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come."[1] The court also cites Mr. Chief Justice Fuller's statement in *Boynton* v. *Blaine*, that "the Government assumed the responsibility of presenting his [Weil's] claim, and made it its own in seeking redress in respect to it;[2] and, referring to the act of 1892, says that in and by it "the United States declares that its citizens shall not through its agency reap the fruits of a fraudulent demand which they had induced it to assert against another country."[3]

But such an assertion of any demand, fraudulent or fair, was the very thing that the Government disavowed; it was not willing to be put in the position of asserting any of the claims, and it accordingly made a formal announcement, before a single claim had been heard by the Commissioners, that it was "not to be inferred from the fact of presentation that the Government thereby expresses *any opinion* upon the *merits* of the claims presented, either *as regards the facts of the case*, which, in most instances, remain to be fully developed before the Commissioners, and *of which the Department therefore cannot judge*, or as regards *the principles of the law* to be invoked in their support." "The responsibility of deciding questions of fact and law," said the Government, by its proper organ, "rests with the Commissioners, but it has been and is the purpose of this Department to interpose no obstacle to the submission of *any claim* with such proofs and arguments in its support as *the claimant* may furnish."[4]

[1] Opinion, 5, 6. [2] *Ibid.*, 9. [3] *Ibid.*, 22. [4] Record, 742, 743.

It is evident that this important and significant announcement of the Government of the United States to the Commission and all concerned had not been brought to the notice of the court when it stated that the Government was seeking "*redress*" for these claimants and had made their claims "*its own.*" The two governments were simply seeking a final settlement of private reclamations, and for that purpose had provided a forum in which their citizens could have their claims, such as they were, against the respective governments examined and determined. On this point it was said by Mr. Daniel, in his report of August 5, 1886, from the Foreign Affairs Committee, upholding the validity of La Abra award:

> "The United States has never undertaken to be themselves the judge of the legitimacy of these claims, nor could they do so. They were a party to the arbitration, not the arbiter. *The legitimacy of the claims was the very question submitted to the court of arbitration under the treaty.*"[1]

In his "Final Report," Mr. J. Hubley Ashton, agent and counsel for the United States, says on this subject:

> "The evidence in the cases of the American claims against Mexico was taken, and the special arguments in those cases on the facts were prepared by the private agents or counsel of the claimants, *the Agent of the United States assuming no responsibility in regard to the proofs.*"[2]

Every civilized government provides municipal courts for the trial of private causes, but vouches for none of them. They are tried on their merits. So it was substantially in this case.

And it was never true that the United States demanded,

[1] Report No. 3474, H. R., 49th Congress, 1st Session, 4.

[2] Ex. Doc. No. 31, Senate, 44th Congress, 2d Session, 15.

as matter of right, over four hundred and fifty millions from Mexico and got four, or that Mexico demanded, as matter of right, over eighty-five millions from the United States and got less than a sixth of one million.[1]

After observing that La Abra Company gave written notice to the Secretary of State on the 17th day of March, 1870, that it claimed from Mexico $1,930,000, and that, subsequently, on June 14, 1870, the Company filed with the Commission a memorial of its claim, stating the amount thereof to be $3,000,030, the court says that "before the case was finally heard the claims were increased to $3,962,000,"[2] and (again) that "before the Commission concluded its labors," the Company "*amended its claim* and fixed it at $3,962,000."[3]

[1] 1017 claims of citizens of the United States against Mexico were submitted to the Commission, amounting in all to $470,126,613.40, of which 186 were allowed, aggregating $4,125,622.20, or less than one per cent.

998 claims of citizens of Mexico against the United States were submitted to the Commission, amounting in all to $86,661,891.15, of which 167 were allowed, aggregating $150,498.41, or less than one-fifth of one per cent.

Over eighty per cent. of the claims on both sides were rejected *in toto*, and the allowances on the other were small compared with the amounts claimed. For example: Evans claimed $60,000 and got $1,000; Rathbone, $100,000 and got $1,000; Warren, $50,000 and got $2,000; Treniss, $54,437.60 and got $500; Giddings, $175,000 and got $33,188; Belden & Co., $314,684.12 and got $53,199.25; Gosche, $126,441.56 and got $15,297.26; La Abra Company, $3,000,030 and got $683,041.32.

The United States Commissioner (Mr. Wadsworth) concurred with the Mexican Commissioner, Mr. Palacio, in dismissing 187 claims of citizens of the United States against Mexico, and with Mr. Zamacona in thus disposing of 350 more of the same kind, making together over half of all of this class that were submitted to the Commission.

By inadvertence the court, in its opinion (p. 2), says that the Commission was organized with Mr. Wadsworth and Mr. Zamacona as Commissioners, but Mr. Zamacona did not become a member of the board till August 19, 1873, more than four years after its organization, and, meanwhile, Mexico had been represented successively by Mr. Palacio and General Guzman.

[2] Opinion, 2. [3] *Ibid*, 42.

But the claim was never amended,[1] and the only foundation for the charge that the amount of the claim was increased by the Company after it had filed its memorial is a calculation that is to be found in the opinion of the Mexican commissioner (Zamacona), in which he computes certain estimates made *arguendo* in the brief of the Company's counsel, which was filed with the Commission on the 3d of April, 1875, shortly before the case was heard by the Commissioners.[2]

This was seized upon by Mexico's agent, General Slaughter, and printed in his so-called "petition" to Congress in the form of a charge that the Company had raised its claim to $3,900,000,[3] and Mexico's counsel have rung the changes on it ever since; but the Company's counsel, in their printed argument before the Commission, really reduced the claim, for the memorial not only claimed $1,000,000 for the value of the mines, machinery, and buildings, but profits at the rate of $1,000,000 *per annum* (in which the value of the ore on the patio seems to have been included); and at the date of the memorial only two years had elapsed since the alleged cause of action accrued. Of the damages, as stated *arguendo* in the brief, *one* million was for "prospective profits" in lieu of seven years' profits at $1,000,000 per annum and $2,000,000 for the "*value of the mines.*"

In the first brief of the claimant's case, filed with the Commission on the 29th of October, 1870, it was said *arguendo:*

> "Now, if these mines with the preparations made were capable of yielding an annual profit of

[1] It is given in Mr. Ashton's Final Report as $3,000,030, the same amount mentioned originally in the memorial; and so also in the argument of the Mexican agent, Avila, before the Commission.

[2] Record, 384, 385. [3] Record, 759.

> $1,000,000, the property could not have been worth less than *ten millions* of dollars to the proprietors."

But that was not an alteration or amendment of the claim, for the brief goes on to say:

> "Inasmuch as the Company has lost the whole of this valuable property, the claim set up in the memorial for $3,000,000 cannot be considered unreasonable or exaggerated."

The learned Chief Justice of the Court of Claims in his dissenting opinion commented on the fact that the case had been argued by the Government in that court as if the "wildly exaggerated demand" of the Company had been allowed by the Umpire. "But such," said he, "is not the award which is now the subject of consideration."[1] The two Commissioners and the Umpire were all of opinion that neither "prospective profits" nor the so-called "value of the mines" should be allowed; and the award included only the actual expenditures of the Company, with an allowance of $17,000 for ores reduced and $100,000 for ores on the "patio," plus interest for designated periods. It is, however, an interesting fact that about twelve years subsequent to the hearing of this case by the Commission the Candelaria mines, which had been tunnelled in the interval (as it was proposed to tunnel La Abra), disclosed a bed of treasure which has yielded more than a million dollars per annum ever since, and the Company has been paying generous dividends on a capital stock of $12,000,000.[2] This was the property at San Dimas in the possession of which the Durango company was protected, according to the testimony of its superintendent (Martin) by sharing the profits with the

[1] Record, 846.

[2] See Appellant's Brief, 299, for a stipulation on this subject, omitted by inadvertence from the Record.

Mexican authorities.[1] His successor (Dahlgren) also testified that they had "found out how to manage and *interest them*"; otherwise (he said), his company "would be compelled to leave like the others, without a doubt."[2]

An award which included neither "prospective profits" nor the estimated "value of the mines" cannot be said to have been "obtained" by claiming both these items; and it was not the intention of the act of 1892, under which this case has been tried, that the Company should suffer any prejudice on account of any claim or evidence submitted on its behalf, unless it was false and fraudulent and the award to some appreciable extent was "obtained" thereby. This proposition will be discussed when we come to consider the evidence on which the Umpire rendered the award.

The court says that "an application was made by the Government of Mexico for a rehearing of the case but a rehearing was denied."[3] This is true, but there were ten such applications to the Umpire in other cases against Mexico, and they were denied also.[4] The Umpire rendered his decision denying these motions on the 20th of October, 1876.[5]

> "Subsequently, [says the court] the Mexican Government, without at all disputing its obligation under the convention of 1868, to comply with the award, placed in the possession of the Secretary of State of the United States certain books, papers, and documents which it alleged had been then recently discovered, and would show that the claim of

[1] Record, 464.

[2] *Ibid*, 99, answer to question 14; see also Birmingham's testimony on this point, answers to 8th, 9th, and 10th interrogatories, Record, 738, 740.

[3] Opinion 3.

[4] Ex. Doc. No. 103, H. R., 48th Congress, 1st sess., 125–128.

[5] *Ibid.*, 128.

> the La Abra Company was not only fictitious and fraudulent but had been supported by false and perjured testimony."

But in the interval much happened of importance in the history of the claim, which is unnoticed in the opinion—probably on the theory, with which counsel does not agree, that Mexico's conduct has nothing to do with the question at issue under the jurisdictional act. Her failure to produce the Company's books and to prosecute her own citizens for perjury, upon whose testimony—like that of Chavarria—the Umpire relied, should be taken as conclusive proof of the falseness of her charges.

It was on the 11th day of January, 1879, that these "books, papers, and documents" were placed by Mexico in the possession of the Secretary of State.[1] But meanwhile Mr. Fish had refused, in his note of December 4, 1876, to Mr. Mariscal, "to entertain the consideration of any question which might contemplate any violation of or departure from the provisions of the convention as to the final and binding nature of the awards, or to pass upon, or by silence to be considered as acquiescing in, any attempt to determine the effect of any particular award."[2] Shortly afterwards (March 29, 1877), when Mr. Evarts was maintaining the same position, the Mexican minister at this capital entered into an agreement in writing with General James E. Slaughter, of Mobile, Alabama, which is part and parcel of the record in this case,[3] and under which he engaged, for a designated percentage of the

[1] *Ibid.*, 444. [2] *Ibid.*, 131.

[3] The whole of the testimony taken by the Senate committee, of which General Slaughter's examination was a part, was offered in evidence by the United States in the Court of Claims, and, in accordance with a stipulation (Record, 854) Mexico's contract with the General was printed in the Appellant's Brief, pp. 9, 10. It is also stated, in substance, in the Record, 434, 435.

award and so much down, "to undertake the proof of fraud in the claim of the La Abra Mining Company against the Mexican Government." Operations were now commenced in Congress, and four hundred copies of each of two pamphlets containing the motions made for a rehearing of the Weil and La Abra cases before the Umpire, with the correspondence between Mr. Fish and Mr. Mariscal, were printed and distributed among members of both Houses.[1] General Slaughter subsequently testified in the Senate investigation that he had charge of Mexico's opposition to La Abra award before Congress and in the Departments; and the United States in this suit, in the Court of Claims, put this testimony of his, and his contract with Mr. Mariscal, and his so-called "Petition to the Senate and House of Representatives," in evidence. In this "petition," which was privately circulated among members of Congress without having been introduced in either House—before any of Mexico's so-called "newly-discovered evidence" was "placed in the possession of the Secretary of State"—General Slaughter asserted that *he* was then "in possession of original books and reports of the said Company and other papers, and he proceeded to give to Congress "a few extracts," which he called "The Story of the Mine," and which, by comparison with the letter-press copy book, have been proved to be garbled and misleading.[2]

One might infer from the court's opinion that "the books, papers, and documents" which Mexico alleged "had been then recently discovered" were submitted at once to the Department of State, as they should have been, but General Slaughter had need of them in the campaign he had started in Congress as "agent of

[1] Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., 154; also Report 27, H. R., 45th Cong., 2d sess., 3, 4.

[2] Appellant's Brief, 205.

Mexico;"[1] and, as already stated, he circulated garbled portions of them in print among members of both Houses, for the avowed purpose of affecting legislation, before a line of them had been submitted to the President or the Secretary of State. Not only so, but this "agent of Mexico," concealing the fact that he had a contingent interest, under his contract with the Mexican Government, in subverting La Abra award, cast reflections in his "petition" upon the Secretary of State, and, by implication, upon the President of the United States, from whom he was, in effect, appealing to the legislative branch of the Government. After quoting a resolution, introduced by Mr. Forney, of Alabama, which declared that international courtesy and justice toward Mexico required the suspension of payment on the Weil and La Abra awards, General Slaughter quoted in his "petition," by way of contrast, Mr. Evarts' declaration in his note of November 6, 1877, to the Chairman of the House Committee on Foreign Affairs, that—

> "These awards, standing on the same footing of finality under the convention with all the others, are awaiting distribution."
>
> "Your petitioner (continued General Slaughter) is convinced that there is no principle of law, international or municipal, by which the United States are bound to distribute this money to the perjurers and their abettors in crime; and as legislation is declared to be necessary in the matter, *your petitioner hereby tenders the proof of fraud to Congress*, and prays that a

[1] "The Weil and La Abra awards being before Congress in connection with charges of fraud, General James E. Slaughter, *as agent of Mexico*, printed and circulated freely among the members of both Houses of Congress a pamphlet containing a petition setting up fraud in the awards, and, *inter alia*, extracts, more or less full, from the correspondence in the letter-book, and also copies of certain letters from Exall to Granger." (Brief of Special Assistant to the Attorney General on final hearing in the Court of Claims, 167.)

thorough and impartial investigation of these claims may be had."[1]

This appeal from the Executive to Congress and the circulation of these garbled and deceptive extracts among Members by the agent of Mexico took place prior to the 18th of June, 1878; and, as already stated, the "newly-discovered evidence" was not laid before Mr. Evarts by the Mexican Government till the 11th of the following January.[2]

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[1] Record, 760, 761.

[2] Mexico's criticisms of Mr. Evarts' conduct in this matter may be found in Mr. Romero's long communication of January 25, 1884, to Mr. Frelinghuysen, evidently prepared by counsel, and printed in Ex. Doc. No. 103, to which so many references have been made, pp. 747–781. Referring to Mr. Evarts' reports of August 8 and September 3, 1879, Mr. Romero says: "Notwithstanding that they called for action of Congress, they were not communicated to that body until April 16, 1880, in response to a Senate resolution of February 27." Referring to Mr. Evarts' grounds for refusing to reopen the cases diplomatically, Mr. Romero says [p. 769], that "these grounds were stated so strongly as to amount to *an argument against any investigation whatever.*"

He also complains that the question whether the honor of the United States required such investigation, "once decided by the Secretary in the affirmative, was *reopened and remitted to Congress* without any light to guide its decision."

And on page 773 the Mexican Minister says of the Secretary of State that "he did not regard in his action the principles formerly recognized by his Government and subsequently announced in the decision of the Supreme Court."

"At first" [says Mexico's counsel, speaking through Mr. Romero to Mr. Frelinghuysen, while the convention for a rehearing was pending in the Senate], "he paid no attention to the representations of Mexico as to the fraud in the claims; and even after Congress took the matter into consideration he deprecated investigation, by advising Congress that the motions for rehearing had been denied by the Umpire; and that the two awards stood on the same footing of finality as to the others, and neglecting to state that the proofs of fraud in the one case had been submitted to him in printed form."

> "When the act of June 18, 1878, was passed, giving him ample authority, he declined to enter into diplomatic negotiations for rehearing the two cases.
>
> "Against the remonstrance of Mexico, and, I am constrained to say, against the plain evidence of the facts submitted to him, *he insisted that the charges and proofs in La Abra case related only to fraudulent exaggeration of damages.*"

As this is a suit in equity, and the Mexican Government (from the beginning) has been the party charging fraud, and pecuniarily interested in the result, will not the court's decision—silent as it is in regard to Mexico's conduct—be construed as an invitation to every government hereafter dissatisfied with a money award against it in an international arbitration to do as Mexico has done in this instance?—to employ a citizen of the creditor nation and give him an interest in the amount awarded, contingent upon his success in securing "proof of fraud in the claim," and have him appeal to the legislative branch of his Government as its "petitioner," and flood it with garbled extracts from alleged "newly-discovered evidence" before submitting a line of it to the diplomatic branch of the Government.

Here is the fact in the record, that there was such a contract between General Slaughter and Mexico.[1] His "petition" to Congress is in the record[2]; so is his testimony in regard to his services as Mexico's agent.[3] It is also in the record that one of his first employees, under his contract with Mexico in 1877, was the able and lamented gentleman who soon afterwards became one of Mexico's attorneys[4] and was in the service of the

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[1] Record, 434; [2] *Ibid.*, 754–802.

[3] "Q. Now, General, since this contract, have you had charge of the prosecution of this matter before Congress and in the Departments?—A. Yes, sir.

"Q. And still have charge of it, have you?—A. Yes, sir.

[4] "Q. Now, state whether you have employed persons to assist you in that matter.—A. Yes, sir. I employed Mr. Lines to assist me.

"Q. When?—A. I employed Mr. Lines soon after signing the contract. (Report No. 2705, Senate, 50th Cong., 2d sess., 914.)

On November 5, 1878, Mr. Zamacona introduced Mr. Robert B. Lines as one of the professional advisers of the Mexican legation in the preparation of the proofs in the Weil and La Abra cases to the Department of State. (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., 192.)

United States as special assistant to the Attorney General in this suit, in the Court of Claims, when he died.

Not only was the "newly discovered evidence" not filed with Mr. Evarts till garbled portions of it had been used in Congress, as we have said, but, when it *was* filed, Mexico withheld the Company's books of account, and intimated to Mr. Evarts that they had been kept in New York, and could have been submitted by the Company to the Commission,[1] although Mr. Gaona, representing the Mexican Government, had received them at Mazatlan a year previously, through Granger, by carrier, from San Dimas.[2]

"The books of the Company," it was alleged in the printed "Case of Mexico," enclosed with Mr. Zamacona's note of November 11, 1878, to Mr. Evarts, "*were not brought from its headquarters in New York*, nor were any extracts given from them to show its receipts from sales of stocks or other sources, or its expenditures,"—*i. e.*, in the case before the Commission. When that was written, Mexico had these books of account in her possession, and knew that they had never been in New York, but had been kept at the Company's works in Tayoltita. Nevertheless, she withheld them from Mr. Evarts, as she afterwards did from the Senate when the treaty for a rehearing was under consideration, and from all the committees in Congress that subsequently dealt with the subject. Why? Because they showed (*a*) the Company's expenditures substantially as allowed by the Umpire; (*b*) the amount taken from "Scotty" and charged, as stated in Bartholow's testimony, to "robbery account;" (*c*) the credit given to Clark for the "tribute" which he paid to General Guerra for the release of the Company's

[1] Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., 197.

[2] Record, 576, 577.

supply train in June, 1867, thus strengthening his testimony in other particulars; (*d*) the receipts from the mint at Durango, proving the falsity of the letter-press copies of Exall's letters, on which Mexico has always relied, and on which the judgment in this case is founded; (*e*) the fine paid for Exall's release from the pesthouse, substantiating the testimony as to his imprisonment; and (*f*) the mutilation of General Bartholow's journal, nearly half of which is torn away, destroying we know not what entries or memoranda. It seemed to be the intention of the Mexican Government, at first, not to withhold these books and papers, for Mr. Zamacona said in his note of June 20, 1878, to Mr. Evarts that "the undersigned would fail to perform his duty if he did not lay *all* this evidence before the Department of State." But before the following January, when Mexico filed her evidence in the Department, she had taken another resolve.

It does not appear from the court's opinion that Mexico was ever in possession of these books, or that she withheld them for so many years, or that she was at last compelled to produce them in this suit, or that they have such a material bearing on the question of fraud or or no fraud, which Congress has submitted to the court for its decision, and which the court has decided against the Company.

This is a suit in equity; and Mexico is not only the moving party originally, but the party who has maintained the attack upon the award from 1877 until now. It is to Mexico that the undistributed portion of Sir Edward Thornton's award is to be returned; and yet the court has entirely ignored her conduct in the history of the claim, and (so far as appears) in the decision of the case, *even when her conduct* (as it seems to counsel) *involves the truthfulness of her charges and the credibility of her evidence.*

How came it that these books were introduced into this case after Mexico had been withholding them for sixteen years, and meanwhile charging the Company with having concealed or destroyed them.?[1] One of Mexico's counsel (the late Mr. Robert B. Lines), who was also "special assistant to the Attorney General," in charge of this suit on the part of the United States, gave notice (in this latter capacity) on the 5th of June, 1894, to the Company's solicitor "to produce the originals of all books kept by the Company or its officers or agents from the year 1865 to 1868, inclusive[2]," although the Mexican Government had obtained from Granger in December, 1877, and January, 1878, all the books and a selection of the papers and records of the Company that had been kept at Tayoltita, and had been abandoned there with the rest of the Company's property in the spring of 1868. To this demand the Company's solicitor replied:

> "In regard to the books and records, letters and correspondence of the Company that were kept in its office at Tayoltita, defendant says that they were left at that place by the defendant's last superin-

[1] The following is from Colonel De Lagnel's examination in the Senate investigation, September 28, 1888, when the books in question had been for more than ten years in the possession of the Mexican Government:

"Mr. WILSON. I assert this: that the books and papers of this Company went into possession of the Mexican government, just as they got these letters that we have seen here. They were left there at the hacienda as a part of the record in this case and the Mexican government got possession of them.

"Mr. LINES. *That is denied.*" (Rep. No. 2705, Sen., 50th Cong., 2d Sess., 47.)

"By Mr. FOSTER. * * * State what record, if any, was contained in any of the books of the Company in your charge of any loss of mules or supplies by seizure by the Mexican authorities previous to your arrival.

"Mr. WILSON. That calls for the contents of books?

"Mr. FOSTER. Yes; *books which we cannot get and do not know anything about.*" (*Ib.*, 66.)

[2] Record, 461.

tendent (Exall), when he abandoned the defendant's property in February or March, 1868, and that since that time neither the defendant nor any of its officers or agents has had possession or control of such books or records, or any of them, except the exhibits attached to Granger's deposition, taken on defendant's behalf May 14, 1870, and subsequently submitted to the United States and Mexican Claims Commission."

Mr. Lines seems to have been so impressed with the Company's response that when he went to San Francisco in the fall of 1894 to take the depositions of certain witnesses who had come up from Mexico, he made inquiries and obtained information which led him to request the Mexican consul general (Mr. Alex. K. Coney) at San Francisco to telegraph to the Mexican government, with the result stated in Mr. Coney's testimony, which was taken about two weeks later:

"Q. Mr. Coney, do you know anything of books purporting to have been kept by La Abra Silver Mining Company at its hacienda at Tayoltita, Mexico, from 1865 to 1868?—A. Yes, sir.

Q. What do you know concerning them?—A. I asked my Government to send them here to me.

Q. How and when did you ask?—A. *I telegraphed for them on the 1st or 2d of October.*

Q. Did you do this of your own motion or request of any one?—A. I *did it at your suggestion.*

Q. Did you receive those books?—A. I did.

Q. Have you them with you?—A. Yes, sir.

Q. When did you receive them?—A. On the 12th of this month.

Q. By what means?—A. By Wells, Fargo & Co.'s Express." (Record, 565.)

Mr. Coney and Mr. Gaona were examined as witnesses for the United States at San Francisco on the 13th of October, 1894, by Mr. Lines, and it is evident that he

had ascertained from Mr. Gaona, prior to his examination, that he had obtained the Company's books of account from Granger as well as the press-copy book and Garth's and Exall's original letters. Mr. Lines perhaps suspected from the response which the Company's solicitor had made to the demand for the Company's account books, that Gaona would be closely cross-examined in regard to everything he got from Granger in the way of documentary evidence, and so he sagaciously determined, when he had ascertained the facts from Gaona, to request the consul general of Mexico to telegraph to the Mexican government to send up all the books and papers which it had received from Granger. Mr. Lines was detained a long time in San Francisco. He examined Sundell at that city on the 2d of October and, as appears from the testimony, it was on that day or the day next preceding that Mr. Coney telegraphed to the Mexican government for the books, which arrived on the 12th, and were put in evidence, as we have seen in his examination on the 13th of October, 1894.

It will be shown more in detail, further on, how these books, so long withheld and introduced at last, as aforesaid, in this suit, corroborate the testimony upon which the Umpire evidently relied in rendering his award, and expose the untruthfulness of those letters of Exall's on which this court seems to have relied in deciding that the award was obtained by fraud.

The court says:

> "That the La Abra Company ceased to work its mines in Mexico and practically abandoned them is undoubtedly true. But is it true that they did so in consequence of violence and outrages committed against it by the public authorities of the Republic of Mexico? The United States insists upon a negative answer to this question."[1]

[1] Opinion, 25.

But should the United States insist upon a negative answer to this question? The United States, acting legislatively, in the jurisdictional act of December 27, 1892, insists that it shall be judicially determined in its courts—

> "*Whether* the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said * * * Company, or its agents, attorneys, or assigns."

Now, because the Attorney General, to raise this issue, has alleged such fraud in his bill, can it be said that the United States insists that the award *in toto* was so obtained? Congress did not allege such fraud, but left it to be judicially determined; and, as we have shown, the President after investigating the same charges, on the same evidence, in response to the original act of Congress, to which the present jurisdictional act is expressly supplemental, decided that the Company had a valid claim and that the honor of the United States required that any further investigation should be confined to the alleged fraudulent exaggeration of the damages. Thus the legislative and executive branches of the Government have acted in this matter. And, if the action of Congressional committees is considered, it will appear that the only committee that ever heard the case argued, in full sessions, on the evidence, old and new, decided—ten to three—in favor of La Abra award in its entirety. And the report of the Senate committee in favor of the bill (now the jurisdictional act) was disapproved by the Chairman, Mr. Sherman, and severely criticised for material errors of fact in a minority report by Senator Brown, who had been a member of the subcommittee

that conducted the investigation authorized by the resolution of August 30, 1888. Both of these Senators were in favor of an exact performance of the award. And in the last report which was made prior to the passage of the bill, the House Committee on Foreign Affairs, instead of insisting that the award had been obtained by fraud, declared that it "did not intend to impugn the integrity of the persons connected with the Company, *nor constitute an opinion on the merits of the case.*"[1]

If it is said that prior to the decree in this suit the United States insisted that the award had been obtained by fraud, it can only be so by reason of Mr. Attorney General's allegations in the bill of complaint. But the specifications of fact in the bill, thirty in number, taken almost bodily from the "Case of Mexico," prepared by her counsel and enclosed with Mr. Zamacona's note of December 11, 1878, to Mr. Evarts,[2] were discussed seriatim, and the utter and often absurd falsity of the mass of them—and all of them that were material—demonstrated in Appellant's Brief, pp. 261–359. If it be said that that the United States insisted in the XVth paragraph of the bill that the company, its witnesses, agents, attorneys and assigns had all committed fraud and perjury, two things are to be remembered: (*a*) that the only survivor of the attorneys so denounced, Mr. S. S. Ely, an old and honored member of the New York bar, long retired from practice, said of that paragraph when it was read to him on the witness stand under his oath in this suit: "It is an outrageous and infamous lie, so far as we are concerned. That is the only way I can characterize it;[3]" and (*b*) that the bill of complaint

[1] Report No. 1143, H. R., 52d Cong., 1st Sess., 8.

[2] Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 201, 202.

[3] Record, 658.

was prepared by Mexico's counsel, Mr. Robert B. Lines, who, upon the passage of the jurisdictional act for which he had labored so long and so devotedly, was appointed special assistant to the Attorney General and put in charge of the prosecution of this suit. His admissions in the Senate investigation of some of his prior false charges, and the flat denial of others by a witness (Elder) examined on behalf of Mexico, were printed in the Appendix to Appellant's Brief, LVIII–LXXIII, and need not be repeated here.

But as the facts are so voluminous and involved—requiring, as a learned Senator said, when the case was before the Senate, at least two weeks for their proper presentation to a jury—we beg the court, in the name and for the sake of justice, to read what the United States said in its bill of complaint in denial of the imprisonment of the superintendent, and what the evidence shows on that subject, as stated on pages 300–308 of Appellant's Brief.

Take a single illustration of another sort: the United States, in its bill of complaint—the purpose of which was to subvert an international award—alleged that *the only reduction of ore at the mills comprised ninety tons, and was made in August, 1867.*[1] The falsity of this statement was shown so conclusively in the Court of Claims from the books so long withheld by Mexico, and at last introduced as aforesaid in this suit, that Mexico's distinguished counsel (Mr. Foster), who had also appeared in the case as "special assistant to the Attorney General," made the following admission:

> "My industrious friend, the respondent's counsel, has ransacked the pile of account books introduced in this suit, and the net result is that he finds four items, and only four, which would seem to have

[1] Record, 17.

> been the silver product of the mill from the time it was put in operation up to the departure of Exall, in February, 1868, a period of ten months."

This is one way of admitting that instead of a single run at the mills, as falsely alleged by the United States in its bill, there had been at least four separate reductions, as shown by the entries of the returns from the mint at Durango. These are the books for which, as already stated, Mr. Lines telegraphed to Mexico when he ascertained that they had been in possession of the Mexican Government since 1878, and counsel for the United States and Mexico seem to have put them in evidence *en masse* without examining them to see whether they supported or disproved the allegations of the bill. For it is inconceivable that any one authorized to act in the name of the United States would make a solemn allegation of fact or allow it to stand, in such a momentous controversy, knowing it was untrue.

The court also says that the United States insists that it was "a pure afterthought" on the part of the Company "to attempt by the agency of the United States to fasten upon Mexico responsibility for the losses incurred by the Company in the abandonment of its mining property."[1] But "the newly-discovered evidence" shows that as early as August 10, 1867, six months before the abandonment, Garth gave Exall instructions, in case the Company was compelled to abandon its property, "to take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government."[2] This was afterwards done in the very way the Department of State would have instructed the Company to proceed; *i. e.*, by appealing to the highest authority in the State for protection against the illegal interferences and oppressions

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[1] Opinion, 25.

[2] Record, 286.

of the local authorities. The claim would not have been expedited if the Company had appealed to its own Government, for it is a matter of history that Mr. Seward was not willing to press individual claims diplomatically upon Mexico while she was struggling to maintain her independence.[1] Besides, it was known all over the country when the Convention of July 4, 1868, was at last concluded; indeed, it was printed in full in the New York *Herald* early in August, and its substance was published broadcast by the press. The evidence shows that General Bartholow came on from Saint Louis to New York in the summer of 1868, a month or two after Exall's return, and that he collected subscriptions from the Western stockholders to meet the expenses of prosecuting the claim, and wrote to Garth, and engaged General Adams to go to Mexico as the Company's agent in the fall of 1869.[2]

We come now to the questions on which we desire to be reheard:

I.

What was in fact the decision made by President Hayes in the investigation of Mexico's charges and evidence (old and new) in respect to La Abra award and in response to the request contained in the 5th section of the act of June 18, 1878? And is it the intention of the Court to set this Executive decision aside and condemn the payments which were accordingly made to the Company and its assigns by the President of the United States?

The court says that "pursuant to the direction of President Hayes the investigation required by the fifth section

[1] Foreign Relations, 1867, part II, p. 445, *et seq.*

[2] Record, 173, answer to question 19; also 718, 719.

of the act of July 4th [June 18th], 1878, was made by the Secretary of State";[1] and that "having reviewed all the proceedings of the Commission * * * Secretary Evarts referred to the contention that in deciding against opening those awards diplomatically and re-examining them by a new international commission, the whole discretion vested in the Executive as a part of the treaty-making power and under the special provisions of the act of Congress was exhausted, and that the payment in the cases referred to should be no longer suspended."[2] But this "contention" was subsequent to the President's decision.

The court also cites Mr. Evarts' statement that "a solicitous attention to the rights of the claimant and the duty of the executive in the premises had confirmed him in the opinion that Congress should determine whether 'the honor of the United States' required any further investigation in these cases or either of them, and provide the efficient means of such investigation if thought necessary."[3] But this statement refers (so far as the decision in La Abra case was concerned) to the question whether any further investigation should be made when the President had decided that La Abra Company had a valid claim, and that nothing remained for further investigation but the alleged exaggeration of damages.

The court also makes other citations from Mr. Evarts' report of April 13, 1880, and says that "the suggestions of the Secretary having been approved by the President, the first, second, and third installments received from Mexico on account of the claim of the La Abra Company, amounting to $138,565.52, were paid to the representatives of the Company." But these "suggestions of the Secretary" were made *after* the decision and *after*

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[1] Opinion, 4. [2] Opinion, 4. [3] Opinion, 4.

the payments had been made, and the court does not state anywhere in the opinion what the conclusions of Mr. Evarts and the decision of President Hayes in regard to La Abra award actually were.

The report from which the court cites was made to the President by Mr. Evarts on April 13, 1880, more than seven months after his special report and the President's decision on La Abra award. This special report on La Abra award, of which the court takes no notice whatever, was made to the President on the 3d of September, 1879, and was formally approved by him in writing on the 5th of the same month. On the 9th of the same month the Mexican government filed a motion for a reconsideration of this decision,[1] and on the 17th the President made payment to the Company of its share of the three installments that had been received from Mexico on account of the award.

This Executive decision of September 5, 1879, was communicated the next day by the Department of State to Mr. Zamacona, the Mexican Minister at Washington,[2] word for word, as follows:

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[1] This motion was entitled "Motion of Counsel for Mexico for Reconsideration of the *Decision* authorizing a Partial Payment of the Award to said Company"; it was signed by Jno. A. J. Creswell and Robert B. Lines, and it is printed in Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 583–586.

[2] DEPARTMENT OF STATE,
WASHINGTON, *September* 6, 1879.

SIR: I have the honor to communicate to you herewith, in accordance with the directions of the President, a statement of the conclusions reached in the matter of the La Abra Silver Mining Company award, under the convention of July 4, 1868, with Mexico, upon the point reserved for further consideration in the paper sent to you on the 20th ultimo. A copy of the statement has been furnished to the counsel for both parties in the case.

I profit by this occasion, sir, to again assure you of my very high consideration.

W. HUNTER,
Acting Secretary.

Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 582.

"*To the President:*

"SIR: The parties interested in the case of the La Abra Mining Company having desired from you a further consideration of the point reserved in my former statement to you of my views in that case, and the matter having been referred to me to that end, I respectfully submit my conclusions on that point.

"1. Upon a renewed examination of the matter as laid before me by the Mexican government, I am confirmed in the opinion that the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim by the parties before the Commission, to which, under the provision of the convention, it was presented by this Government.

"2. Upon a careful estimate as to any probable or just reduction of the claim from further investigation should Congress institute it, and under a sense of the obligation of the executive government to avoid any present deprivation of right which does not seem necessary to ultimate results, I am of opinion that its distributive share of the installments thus far received from Mexico may properly be paid to the claimants, reserving the question as to later installments.

"If this conclusion should receive your approval the payment can be made upon the verification at the Department of State of the rightful parties to receive it.

"WM. M. EVARTS.

"September 3, 1879.

"Approved:

"R. B. HAYES.[1]

"September 5, 1879."

This is the Executive decision of September 5, 1879,

[1] Ex. Doc. No. 102, H. R., 48th Cong., 1st Sess., 582, 583.

followed by payment of $138,565.52 to the Company on the 17th of the same month, to which the attention of the court was invited in paragraph II of the Appellant's Brief, pp. 47–87, with authorities sustaining the proposition (pp. 64–66) that the President's action in the premises could not be reversed, reviewed, or ignored by the courts.

This was one of the points on which the learned Chief Justice of the Court of Claims based his dissent from the opinion of the other judges:

> "In 1879 (he said) the diplomatic organ of the American Government, the Secretary of State, '*upon a renewed examination of the matter as laid before him by the Mexican government*,'[1] decided '*that the proper limits of the further consideration*[1] which the honor of the Government should prompt it to give to this award *should confine the investigation to the question of a fraudulent exaggeration of the claim.*'[1] In other words, the Secretary of State decided that the acts of the Mexican officials to these American claimants were such as rendered the government of Mexico responsible from an international point of view. This decision is rendered unequivocal and unquestionable by the fact that the President, upon recommendation of the Secretary, then proceeded to deal with the claim upon the basis that the responsibility of Mexico for the acts and inaction of its officers was a question finally settled. He did this by paying out a portion of the award to the claimants and withholding only enough to meet the charge of fraudulent exaggeration."[2]

How the President's action was understood by Mexico at the time is apparent in the first sentence of her counsel's motion of September 9, 1879, for a rehearing:

> "The undersigned, counsel for Mexico, have the honor to acknowledge the receipt of the Depart-

[1] The italics are the Chief Justice's. [2] Record, 843.

ment's letter of the 6th instant, transmitting the conclusions of the Secretary, dated at Windsor, Vt., on the 3d, and *approved by the President on the 5th instant, authorizing the distribution of the installments already paid by Mexico to the credit of the award in favor of La Abra Mining Company*, ON the GROUND *that the charges preferred by Mexico, and the proofs submitted in support thereof*, TEND ONLY *to establish a 'fraudulent exaggeration' of the claim of that Company;* and that upon a 'careful estimate as to any *probable* or *just* reduction of the claim from further investigation,' which, it had been determined by the decision of the Secretary, dated August 20, to recommend to Congress, it is not supposed that the alleged right of the claimant to the amount now in hand (nearly $150,000) would be affected by the result of such investigation." [1]

Regarding this decision it was held by the Judiciary Committee of the Senate, in a unanimous report, dated June 20, 1880, which was adopted by the Senate *nemine contradicente*, that "*it virtually determines the question submitted to the Executive Department by the said fifth section, so far as that claim (La Abra Company's) is involved.*" [2]

In consequence (June 12, 1880) the Foreign Affairs Committee, which had reported in favor of an investigation by the Court of Claims, asked leave to withdraw its report and the accompanying bill from the further consideration of the House, and by unanimous consent it was so ordered.

It is reasonable to infer from the unanimity, cogency, and earnestness of the Judiciary Committee's report and its adoption by the Senate, that one of the reasons why the convention for a rehearing of the Weil and La Abra claims afterwards failed to receive the necessary majority

[1] Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 583.

[2] For further extracts from this report, see Appellant's Brief, 21, 22.

was that it ignored the fundamental distinction which President Hayes had made between the two cases, and would, if ratified, have overruled his decision that "the proper limits of the further consideration which the honor of the Government should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration of the claim."

Shortly after the rejection of the convention for a rehearing, Mr. Edmunds, for Mr. Morgan, made a report from the Senate Committee on Foreign Relations (July 7, 1886) in which, with other references to President Hayes' decision, it was said:

> "Notice being given to the Mexican Minister and to counsel on the 20th of August of this decision, further argument was heard, and a supplementary decision was made September 6 [5,] 1879, to the effect that in La Abra case the investigation should be confined to the question of a fraudulent exaggeration of the damages, and that the two [three] installments up to that time paid in by Mexico might safely be distributed to the claimants, reserving the question of fraud as to later installments. The Mexican Minister protested against this construction and maintained that the charge and evidence submitted by him went to the root of the claim. No reply was made to the two notes of the Minister on this point, and on the 17th of September, 1879, the two [three] installments were paid to La Abra claimants."[1]

This is the report from which the court makes a citation on the eighth page of the opinion, closing with the statement that these claimants have no vested rights entitling them "to demand the payment of *any part* of these awards that are the outgrowth of fraud and perjury."

[1] Report 1454, Senate, 49th Congress, 1st Session, 6.

Mr. Evarts well understood from the outset that Mexico claimed that the award in its entirety had been obtained by fraud, for he had been furnished with a copy of General Slaughter's petition, and Mexico's counsel (Mr. Lines) in his opening argument (May 10, 1879) had said to the Secretary:

> "We absolutely deny, and Mexico has always denied and has never admitted what is artfully insisted upon, that the question is one of damages which Mexico ought to pay."[1]

After Mr. Evarts' original decision of August 8th, in which he made the radical distinction between the two cases, and proposed to the President, if he approved, to make a supplemental report on the case of La Abra, Mr. Zamacona sent a note to Mr. Evarts (August 25, 1879) reiterating Mexico's claim that the whole of the award had been obtained by fraud,[2] and Mexico's counsel filed a protest or "supplemental brief," dated September 1, 1879,[3] insisting on this contention, and it was doubtless on account of this insistence that Mr. Evarts commenced the statement of his final conclusions in La Abra case with these significant words:

> "1. Upon a *renewed* examination of the matter, *as laid before me by the Mexican government*, I am *confirmed* in the opinion that the proper limits," &c., &c.

Mr. Hunter's note of September 6, 1879, written, as he said, by direction of the President, and enclosing a copy of Mr. Evarts' conclusions, approved in writing by the President (*supra*), was an answer to Mr. Zamacona's note

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[1] Ex. Doc. No. 103, 48th Congress, 1st Session, H. R., 451.

[2] Ex. Doc. No. 103, H. R., 48th Congress, 1st Session, 572.

[3] *Ibid.*, 573–581.

of August 25, and any other note or argument on the same subject of a date prior to the final decision.

This decision was recognized as being still in effect on the 5th March, 1888, the date of Mr. Bayard's second report on the two cases to the President, and communicated by him to Congress, in which he referred to the fundamental distinction made between them in 1879, as follows:

> "Nor can the payment by Mr. Evarts of certain installments of La Abra award be regarded as inconsistent with his recommendation in that case, since the allegations of fraud in relation thereto affect only the measure of damages and not, as in the Weil case, the question whether any ground of claim ever existed."[1]

It will be noticed that Mr. Bayard does not make this statement as a citation of an opinion or decision by a previous Administration, perhaps open, after a lapse of nine years, to question, but as an effective determination binding on him and all concerned—"since (he says, speaking in the present tense), the allegations of fraud in relation thereto affect *only* the measure of damages, and *not*, as in the Weil case, *the question whether any ground of claim ever existed.*"

So serious an obstacle was this in Mexico's path and so anxious was her distinguished counsel to overcome or evade it, that in his argument on the bill (now the jurisdictional act) before the House Committee on Foreign Affairs in the spring of 1892, he made the following statement (italics ours):

> "Claimants assert that Secretary Bayard took the same view as Mr. Evarts. What Secretary Bayard did do *in the first instance* was simply to follow the conclusions reached by Secretary Evarts. *It is to be*

[1] Ex. Doc. No. 109, Senate, 50th Cong., 1st Sess., 6.

noted, however, that this expression was only made in Secretary Bayard's first report on the subject. The treaty was rejected April 21, 1886, and on May 11, 1886, President Cleveland sent his message to Congress, and there was manifestly little opportunity afforded the *new* chief of the State Department to examine in detail the long documentary history of the case. *But two years afterwards, when sufficient time had elapsed for the thorough examination of the matter,* President Cleveland sent his second message to Congress, March 5th, 1888. Mr. Bayard's report accompanying this message bears no uncertain tone, *nor does it repeat the conclusion of Mr. Evarts on this point, though free quotations are made from his report.*"[1]

But it was in Mr. Bayard's earlier report (May 11, 1886) that he failed to state either the radical distinction made by President Hayes between the two cases on the merits, or the fact that payment was made in the one case and withheld in the other; and it was in his later report of March 5, 1888, "when (as Mr. Foster suggested) sufficient time had elapsed for the thorough examination of the matter," that he referred to Mr. Evarts' conclusions, approved and acted upon as they had been by President Hayes, as the law for La Abra. It thus appears that the facts are just the reverse of those stated by Mexico's counsel [redacted] to the committee.

Now we come to the time when in the lapse of years this Executive decision of September 5, 1879, seems to pass into oblivion. The Senate report of March 1, 1889, in favor of the bill (now the jurisdictional act) stated the conclusions of Mr. Evarts and the action taken by President Hayes, under the fifth section of the act of June 18, 1878, as follows:

"In accordance with the provisions of this sec-

[1] Mr. Foster's printed argument, 15.

tion, the President (Mr. Hayes) caused an investigation to be made of the charges of fraud preferred by the Mexican government, and Mr. Evarts, then Secretary of State, made a careful examination of the newly-discovered evidence presented by Mexico, and submitted his conclusions thereon to the President August 12, 1879, to the effect:

> "'That the honor of the United States does require that these two cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of her citizens based upon or exaggerated by fraud.'
>
> "But was of the opinion that any agreement with Mexico for the opening of the awards would involve the admission by the United States that the results of the convention were not final and conclusive between the two governments.
>
> "President Hayes adopted the views of Secretary Evarts, and, in communicating his report to Congress, recommended that legislation should be enacted providing for the further investigation of these claims by some domestic tribunal."[1]

There is nothing further in that report on this subject. Although the report was made upon a bill for a judicial examination of La Abra award, by way of amendment and enlargement of the act of June 18, 1878, it entirely misrepresented the proceedings which had been taken by the President under that act. It not only concealed the distinction which Mr. Evarts had made in his first report to the President between the Weil and La Abra cases, but suppressed his supplementary report upon La Abra case altogether. Not only so, but it imputed an opinion to Mr. Evarts which he never expressed, in regard to the effect of "any agreement with Mexico for the opening of the awards," and then it stated that the President adopted the views of Mr. Evarts and, in communicating his report to Congress, recommended certain

[1] Report 2705, Senate, 50th Cong., 2d Sess., pp. III & IV.

legislation which he never, in fact, recommended. The President made no recommendation whatever in transmitting Mr. Evarts' report to Congress. The executive investigation and decision, so far as La Abra award was concerned—and that was the subject of the committee's report—could not possibly have been more materially or adroitly misrepresented to Congress.

Proceeding with its astounding concealments and perversions, the report states (after referring to the action of the Senate Judiciary Committee in 1880) that "Congress having adjourned without making any provision in reference to La Abra and Weil awards, *President Hayes, in the absence of Secretary Evarts, directed the Assistant Secretary of State to distribute to the claimants the installments which had been received and were then undistributed.*"

But we know that the President paid, on the 17th of September, 1879, to La Abra Company and its assigns its share of the installments then on hand, though he withheld payment on the Weil award till 1881.

The object of this report was to get rid of the President's decision and the consequent responsibility of the Mexican government to La Abra Company. It makes a citation from Mr. Bayard's report of March 5, 1888, in regard to the "two cases," but conceals his reference to the fact that it had been determined by the President that La Abra Company had a valid claim against Mexico, and that "the allegations of fraud in relation thereto affect only the measure of damages, and not, as in the Weil case, the question whether any ground of claim ever existed." All this was in preparation for a finding which would not seem to be incompatible with any previous decision of the Government of the United States in the premises, and this finding was that the newly-discovered correspondence was "sufficient, considered alone, to show the whole claim of the Company to be

fraudulent, and the claimant's testimony before the Mixed Commission to have been rank perjury." This is the report from which the court makes a citation to the same effect on pages 8 and 9 of the opinion.

So bent was this report on getting rid of the President's decision and Mexico's established responsibility that it declared that the evidence did not show that Exall was actually imprisoned, in face of the testimony of Mexico's witnesses and the assertion of the Mexican Commissioner himself to the contrary.

But the most outrageous and mischievous misstatement of all in this remarkable document is that the Umpire's remark, made in his denial of the motion for a rehearing, namely—that he doubted "whether the government of either country would insist upon the payment of claims founded upon perjury"—referred "*to the newly-discovered evidence in La Abra Claim.*"[1]

When these words were penned it had been established beyond doubt by communications from the Mexican government (as well as from the original motion and its denial) that not a scintilla of "newly-discovered evidence" was before Sir Edward Thornton when he denied the motion for a rehearing;[2] and we know now exactly how, when, where, and from whom the so-called "newly-discovered evidence" was obtained. Not a line of it came into possession of the Mexican government prior to December, 1877—more than a year after the Umpire had refused to reopen the case.

The ostensible author of the report was not a man to vary a hair's breadth knowingly from the truth. He could not possibly have intended to give Congress the idea that what the Umpire said about perjury—in the

[1] Report 2705, Senate, 50th Cong., 2d Sess., XV.

[2] Ex. Doc. No. 103, H. R., 48th Cong., 1st Sess., 144, note by the Mexican agent; 201, 759.

admonition which he administered to the Mexican agent—applied to new evidence impeaching the award, when no such evidence was before him.[1]

But in spite of all these perversions and misrepresentations, President Hayes' decision, as it was actually made in 1879 and practically sustained by the Senate in the rejection of the convention for a rehearing, and subsequently restated by Mr. Bayard in 1888, was drawn into the jurisdictional act by the recital in the preamble, and that act is qualified and limited by that decision. That the recital in the preamble of the act was inaccurate and misleading—corresponding in that respect with the report—makes no difference. Congress was misinformed and mistaken as to the action which had been taken by the President in this case, but Congress did not intend that that action, whatever in very deed it was, should be examined and overruled by the courts. On the contrary, the reference in the preamble of the act to the report of the Secretary of State in this case, and to what, in his opinion, "the honor of the United States" required, was intended to incorporate into the act, and, as matter of law, did incorporate into the act the conclusion of the Secretary and the decision of the President—

> "*That the proper limits of the further consideration which* THE HONOR OF THE GOVERNMENT *should prompt it to give to this award should confine the investigation to the question of a fraudulent exaggeration*

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[1] This perversion of the Umpire's utterance was made by Mexico's counsel in a memorandum which was transmitted by Mr. Romero to Mr. Frelinghuysen, December 5, 1883, *while the convention for a rehearing was pending in the Senate.* (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., 681.)

It was repeated in Report No. 1316, Senate, 49th Cong., 1st sess., and this report was reprinted in Report No. 15, Senate, 51st Cong., 1st sess., on p. 30 of which this mysterious perversion appears.

Although the earlier report (No. 1316) was upon the *Weil* case, it nevertheless made this false application of the Umpire's words to La Abra.

of the claim by the parties before the Commission to which, under the provision of the convention, it was presented by this Government."

"And here it should be noted," says Mr. Chief Justice Nott, in his dissenting opinion, "that the jurisdictional "statute followed the decision of the Secretary of State, "and was in furtherance of his views, as may be seen in the "preamble. The action of the President and the act of "Congress must be construed with reference to each "other, and the later especially with reference to the "earlier."[1]

After quoting this Executive decision, which, he said, was rendered "unequivocable and unquestionable by the "fact that the President, upon the recommendation of the "Secretary, then proceeded to deal with the claim upon "the basis that the responsibility of Mexico for the acts "and inaction of its officers was a question finally settled," Mr. Chief Justice Nott says, on the point we have been making:

> "The case therefore comes into this court with the international question determined by the Umpire, and *the responsibility of the Mexican government reasserted by the constitutional and proper diplomatic authority of the United States.*"[2]

This was assumed at the time by Mexico's counsel, Messrs. Creswell and Lines, for in the motion which they filed in the Department of State on the 9th of September, 1879, for a reconsideration of Mr. Evarts' decision, they argued that the fifth section of the act of June, 1878, provided for "a judicial hearing," and that such hearing would undoubtedly be confined within the limits

[1] Record, 845. [2] Record, 843.

determined by the President unless his decision were reversed or modified. On this point they said:

> "According to the several decisions of the Secretary, the proofs are to 'be laid before Congress for the exercise of their plenary authority in the matter,' and to be accompanied by a recommendation (*to which Congress will doubtless seek to give effect*) that their investigation be *confined* '*to the question of fraudulent exaggeration of the claim.*'" [1]

It may as well be noted here as elsewhere that Mr. Evarts, in his report of August 8th, advised the President to transmit "the proofs" and his "conclusions" thereon to Congress only in case his decision should be "adverse to the immediate payment on these awards of the installments received from Mexico." Payment, as we have seen, was promptly made to La Abra Company, and no report was made to Congress until April 15th of the following year, and then only in response to a resolution of inquiry adopted by the Senate on the 27th of February, 1880.

In regard to the consequences of a final judicial condemnation of the President's action in this case, and a reversal of his decision, whether in express terms or by necessary implication, we beg to invite the careful consideration of the court to the observations of Mr. Chief Justice Nott in his dissenting opinion on pages 845 and 846 of the record. For convenience we quote what follows:

> "For the President to believe that the Mexican government might be wholly exonerated, and the award be wholly and absolutely invalidated for fraud, and the claimants ultimately be held to be entitled to nothing, and the Mexican government be adjudged entitled to have the whole of the award

[1] Ex. Doc. No. 103, H. R., 48th Congress, 1st Session, 584.

returned to it, and then for the President, so believing, immediately to pay away one-third of it to these same claimants, would be foolishness. Such inconsistency cannot be attributed either to the President or to the Secretary of State.

"Neither can it be supposed that in a transaction international in its character Congress intended that the judiciary should review the decision and action of the diplomatic branch of the Government, and undo what it had done, and subject the President and Secretary of State in their dealings with a foreign power to the implied censure of American courts.

"Nor can it be supposed that Congress intended to create by implication a possible equitable liability on the part of the United States to Mexico.

"For if the judiciary should decide that the Mexican authorities were not guilty of the acts complained of, and that the Company did not abandon the property because of those acts, and should declare the award to be void, wholly and absolutely, then it must follow that when the President and Secretary of State, with the same evidence of fraud before them, paid away $240,683 to the claimants, it was a wrong done to Mexico, and the United States will then be in the dilemma of either leaving this wrong to Mexico unredressed or of making good the loss from their own treasury. The statute does not provide for such a liability, nor contemplate it, and nations in international controversies do not submit their own diplomatic acts to such censure."[1]

And now we come to the question—

II.

On what evidence was the Umpire's decision founded, and what material part of it, if any, has been surcharged and falsifisd by the new evidence?

As we understand the jurisdictional act, the fraud which

[1] Record, 845.

will vitiate the award must be fraud by which the award was actually "*obtained*" as to the whole sum included therein, or as to any part thereof—"fraud *effectuated* by means of false swearing or other false and fraudulent practices." It was not the intention of the act to set aside the award in whole or in part on account of any allegations of fact or of opinion in the memorial of the Company (such as the prospective income or estimated value of the mines) or on account of any testimony of the Company's witnesses, no matter how false such allegations or testimony might be, unless the Umpire believed them, and, actuated by that belief, made the decision he did. The award, like any other judgment of a court of competent jurisdiction, imports verity; and the burden of proof is on the Government, under the act, to show that in making his award, the Umpire accepted as true testimony submitted by the Company which was, in fact, false and fraudulent, and but for which he would not have made the award. It is not enough to prove that certain witnesses swore falsely; it must be shown conclusively, or at least beyond reasonable doubt, that such false testimony was submitted by the Company, knowing it to false, and that the Umpire relied upon it in making his award; or, in other words, if the evidence that induced the Umpire to make the award remains unimpeached, the award must stand. Much more than this could be claimed under the decision of the court that this is a suit in equity, a strictly judicial proceeding brought to determine whether the judgment of an international court of final and exclusive jurisdiction was obtained by fraud, and that such suit must be governed by established legal principles; but for our present purpose we do not need to claim that the fraud must be extrinsic, or that it must not be such fraud as was tried or triable before the Commission. It will be enough for the

present if it be granted that the award is not to be set aside for any false swearing that was not actually efficient or operative in obtaining the award. And we assume that if the facts which in the Umpire's judgment made Mexico responsible actually existed, the award must stand, even if this court would not give those facts that effect in a case originally before it.

For example: If the Umpire believed that the local magistrate, Soto, issued the orders which he testified he issued, and that he afterwards illegally seized part of the Company's property and put up reducing works on it, and that he was not dismissed or otherwise punished when the higher court at Durango condemned his action as illegal, and that he continued in possession of the seized property under a lease that was given to placate him, and that he moved into the Company's principal hacienda and remained in it, working the Company's mines, for more than two years after the abandonment; and if the Umpire believed that Exall had been illegally imprisoned by the other local magistrate, Perez, and was denied protection or redress on appeal to the higher authorities, and that after he was released from prison he was threatened by the Prefect at San Dimas as well as by the magistrates at Tayoltita, and that he finally left in fear of his life, or because it was impossible for him to conduct the Company's business under such conditions; and if these facts were true, the award must stand even if this court as matter of law would not consider these facts sufficient to fasten the responsibility for the abandonment on Mexico. And this because the United States and Mexico committed that very question of liability to be determined by the Umpire, and solemnly covenanted to accept his decision as final, and "to give full effect to it without any objection, evasion or delay whatsoever." A decision cannot be said to have been ob-

tained by fraud because it is based upon a principle or an application of the law on the part of the Umpire that would not have been so applied by the court.

The court says that in view of the exceptional character of the case, and that there may be no ground to misapprehend the basis upon which the decree will rest, it is deemed appropriate to set forth in the opinion the principal facts bearing upon the issue of fraud.[1] The court then states the substance of the Company's memorial, and says that it contains no hint or intimation that the abandonment by the Company of mining operations in Mexico was due in any degree to its inability or failure to supply the money necessary for the development of its property and to meet the expenses of mining operations. That is true, and the reason that the memorial contained no such hint or intimation may have been that the Company could have had all the money that would have been required for the development of its property if it had received the protection that was necessary for the conduct of its work. Besides, the poorer it was the more it needed the protection to which it was entitled by law, and the less likely it would have been to abandon its new and costly machinery and buildings, which, with the mines, could have been retained under the Mexican laws at a comparatively trifling expense until some rational disposition was made of them. For it seems irrational to suppose that such expensive improvements as the Company's would have been left derelict, when parts of the machinery were of such value that the superintendent of the Durango mines, on the other side of the mountain, went to the expense of transporting them to his establishment under a stipulation filed in the local court to make payment when required.

[1] Opinion, 23.

The court then states the issue as follows:

> "That the La Abra Company ceased to work its mines in Mexico, and practically abandoned them, is undoubtedly true. But is it true that they did so in consequence of violence and outrages committed against it by the public authorities of the Republic of Mexico?" [1]

What follows is from the opinion of the Umpire on that question:

> "The local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by treaty, not only showed themselves a spirit of bitter hostility to the Company, but encouraged their countrymen who were employed by the claimants in similar behavior, and even frightened them into refusing to work for their American employers. The conduct of these authorities was such, and the incessant annoyance of and interference with the claimants was so vexatious and unjustifiable, that the Umpire is not surprised that they considered it useless to attempt to carry on their operations, and that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise." [2]

Now it is to be observed—and the court will see the force of this observation more clearly on a careful reading of the whole of the Umpire's opinion—that it was not the seizure of the Company's supply trains, or the murder of Grove, or the robbery of "Scotty," or the requisition of Valdespino, or any of the things that occurred in the early history of the Company, that impressed the mind of the Umpire in making his award—it was *the conduct of "the local authorities at Tayoltita and*

[1] Opinion, 25. [2] Record, 8.

San Dimas." But the court scarcely alludes to this material part of the case, although it dwells at great length upon things that happened in 1865 and 1866, two years before the abandonment. In the Company's notice of March 17, 1870, to the Department of State, the claim was based upon violence and outrages "*committed in 1867 and 1868.*"[1] Besides, it stands to reason that as the abandonment occurred at the close of Exall's superintendency, which had lasted about a year, we must look for the efficient causes of that abandonment in his time.

The court says that "the principal witnesses before the Commission were Bartholow and Exall;"[2] and again, "that there was before the Commission some evidence which, uncontradicted or unexplained, tended to support the allegations of outrage, violence and neglect of duty on the part of the Mexican authorities may be admitted. That evidence came largely from Bartholow and Exall."[3] But it will be shown further on that there were other witnesses more important than either of these, and that there was also documentary evidence of a material character. The court also says:

> "But it is manifest that the Umpire could not possibly have reached the conclusion that he did in respect to the La Abra claim if the letter book giving detailed accounts from time to time of all that occurred at the mines while in charge of Bartholow, DeLagnel, and Exall had been in evidence when he rendered his decision. * * * Let us see [says the court] how far this general statement is justified by the evidence adduced in the present case, when examined in connection with the testimony brought before the Commission."[4]

The court then takes up the murder of Grove, and compares what Bartholow said about it in his letter of March 7, 1866, to Garth, with his deposition, taken eight years

[1] *Ibid.*, 4. [2] Opinion, 26. [3] Opinion, 27. [4] *Ibid.*

later and filed with the Commission. There is doubtless a discrepancy, but it is not suprising when one remembers that General Bartholow was a man of many affairs, that the letter book which would have refreshed his recollection had been left at the mines; that two of his train captains had been murdered, and that the train in charge of the one whose body was not recovered had been seized by the military. General Bartholow might readily, after such a lapse of time, testifying as he did from recollection, connect some of the incidents of the one case with the other. But his testimony on this subject was not the only testimony before the Umpire. Loaiza, a Mexican of some standing and education, testified to the killing of two of the Company's trainmasters, and when he was re-examined by the Mexican Government, after the rendition of the award, he was not questioned on that point. The fact of the double murder, and of the seizure of the train in one of the cases, was substantiated by several other witnesses. Grove, according to Bartholow's letter, was murdered near Candelero Creek. The other trainmaster, according to the hearsay testimony of Alfred A. Green (one of General Slaughter's sub-agents)—

> "Was killed by some Mexican soldiers near El Toro, State of Sinaloa, while on his way from the Company's mines to Mazatlan with a mule train of supplies for the Company, and the mules and supplies were taken by the soldiers."[1]

Avalos, who is vouched for by witnesses on both sides, testified that he had heard of the murder and loss of *two* captains of the Company's mule trains,[2] and Loaiza, another Mexican witness (already mentioned), testified that Grove was murdered "*by the people of the country* * * * at a place called El Arroyo del Candelero"

[1] Record, 35. [2] *Ibid*, 52.

(agreeing, it will be observed, with Bartholow's *letter*), while the other muleteer was killed—at all events he disappeared—and his train was captured by the republican army.[1] This happened "*at the end of 1865* or the beginning of 1866"—prior to Grove's murder, and *also prior to the commencement of the letter book, which does not cover the first six months of General Bartholow's superintendency.* The Umpire had also before him Clark's evidence, which showed that Grove "*was travelling alone and not in charge of his train of mules*" when he was murdered.[2] It is thus clear that the Umpire had before him evidence in regard to Grove's murder, of precisely the same kind as is now brought forward in Bartholow's letter. The Umpire makes no reference whatever to the occurrence which, as already stated, happened two years before the abandonment.

General Bartholow was at the head of a banking house in St. Louis, and had been colonel of a Missouri regiment in the civil war before he was brevetted brigadier. Mr. Enos Clarke, United States Commissioner, who took Bartholow's deposition, certified that he was well known to him as a prominent banker and citizen of St. Louis, a man of responsibility and of excellent character for truth and veracity, and the Honorable Samuel Treat, judge of the United States District Court for the Eastern District of Missouri, certified that in his opinion Thomas J. Bartholow, who was personally known to him, was "a prominent banker in the city of St. Louis and a gentleman of unquestioned veracity and integrity, whose statements are entitled to the fullest confidence."[3] General Bartholow seems to have been known—by reputation at least—to members of the House Committee on Foreign Affairs, for they said of him, of their own motion, in the last report that was made on the bill

[1] Record, 72. [2] *Ibid*, 63. [3] Record, 173, 174.

(now the jurisdictional act) that it was "fair to assume that he believed that the mines were valuable, and when he left them had high hopes as to their future."[1] It seems hard, when so many misstatements of readily ascertainable facts have been made in this case by the representatives of Mexico and the United States, that one of our citizens who deserved so well of his country, and was so highly respected where he had lived such a long and useful life, should be denounced as a perjurer when he is dead. There is scarcely a man who has undertaken to state an occurrence from memory, after the lapse of many years, who has not been surprised on comparing his recollection with the details as recorded at the time.

The court next takes up the robbery of "Scotty" and describes it as "another of the outrages alleged to have been committed by the Mexican authorities and to have resulted in driving the La Abra Company from its property.[2] But this also happened two years before the abandonment, and is not alluded to by the Umpire. It is, however, to be observed that the amount taken from "Scotty," $1,178, *is charged, as Bartholow testified in his deposition, to "robbery account" in the books of the Company.* Bartholow's letters to the tax collector and General Corona show that "Scotty" was intrusted with a large sum of money to be used in making a compromise settlement of an illegal charge or tax of $3,000 to $4,000, which had been levied on goods belonging to the Company, and that he had besides a check for $1,000, the proceeds of which he was to bring up from Mazatlan for use at the mines. He settled the taxes for a nominal sum, and had, on his return from Mazatlan, about $3,000 in coin on his person. Of this, according to Clark, the

[1] Report No. 1143, H. R., 52d Cong., 1st Sess., 8.

[2] Opinion, 29.

soldiery took $1,178, perhaps, as the Mexican Commissioner afterwards suggested, by way of "duty on circulation."[1] Even private soldiers levied such taxes in those times and places.[2] Clark testified in 1870, that he visited General Guerra's headquarters with "Scotty" for the purpose of obtaining the return of the money, and General Guerra, for aught that appears, might have been examined by Mexico. Avalos testified that when Scotty got back to Tayoltita he told him that he had been robbed by the military.[3] The ground for the attempt to recover the money from General Guerra was the military character of the persons who had taken it. But, curiously enough, the correspondence which General Bartholow says he opened through Colonel Vega with General Corona[4] on the subject, has disappeared from the letter book, if it ever was copied into it.

Touching the Valdespino affair, to which so much space is devoted in the opinion,[5] the court seems to have overlooked the greater part of the evidence which was before the Umpire. That evidence showed that the affair had happened *before either Exall or Granger reached the Company's mines;* and — what was of more importance—the Umpire had before him the original requisition,[6] which showed on its face that it was to be levied not alone or chiefly upon the Company, but "*upon those persons in best circumstances of this district and of the villages and estates appertaining to the same.*" It is true that Granger said in his deposition for the Company, "this letter demands $1,200 from said Company, and it is needless to say the demand was complied with." But this letter of Valdespino to DeLagnel (like the requisition on the prefect, *both of which were before the Umpire*), showed on its face that the levy was general, and *that Colonel*

[1] Record, 396. [2] *Ibid.*, 191, answer to question 16. [3] *Ibid.*, 52.
[4] Record 220. [5] Opinion, 31, 32, 33. [6] Record, 127.

DeLagnel was required to contribute his share "toward completing the contribution levied by the gefetura."[1] The Umpire had also before him Granger's deposition of August 23, 1871, given on behalf of the Mexican government, in which he showed his ignorance of the affair by stating that Valdespino "asked $1,200 from the La Abra Company, but that *he did not know whether the Company paid it or not.*" It is respectfully submitted that, in the face of this record, it cannot be justly said—"here we have a distinct assertion by the Company, through its witnesses, that this demand to pay $1,200 was met by the Company." It is clear that the Umpire was not deceived, and, as already stated, his award does not show that he attached any weight to the earlier difficulties which the Company had with the authorities. It may as well be added here that on this affair, as well as on all the others, the Umpire had before him the testimony of Mexico's witnesses, and (as Mr. Evarts observed) the text of his award shows that he gave the evidence on both sides the most careful consideration. For example: In this Valdespino affair the Umpire had not only the original documents, which spoke for themselves, and Granger's subsequent denial of any knowledge on the subject, but he had also the testimony of various Mexican witnesses, among them Delgado, to the effect that "a military commander, Jesus Valdespino, had solicited from the inhabitants of this place some assistance for his troops, and that it was willingly given to him by every resident of means, as in the case of deponent, who contributed a small portion."[2] And the Umpire had also before him the argument of the Mexican agent Avila, and the opinion of Mr. Zamacona, in which they discussed the affair.[3] DeLagnel testifies that he was advised to make the contribution which he did make for

[1] Record, 54, 55. [2] Record, 135. [3] *Ibid.*, 394, 422.

the reason that, if he refused, the Company's hacienda would be sacked; and that, as it was, the Company's Mexican employees deserted the works because they were afraid of their own soldiers.

Here the court leaves the alleged wrongs of the Company—back in 1866—remarking that there were undoubtedly some unpleasant occurrences, such as the affair between Exall and Perez,[1] and takes up the question, "What does the letter-impression book disclose as to the real cause of the Company's abandonment of its mines"?

The court remarks that in Bartholow's reports, as found in the letter book, no statement is made showing that any difficulty was in his way that had its origin in the acts or conduct of the public civil or military authorities of Mexico. But, as the court observes, his first letter to Garth copied in the letter book is dated February 6, 1866, and that was more than six months after his superintendency and active operations at Tayoltita had begun; and, as already stated, the evidence shows that a train of supplies had been captured and the head muleteer, a Mexican, murdered late in 1865, or early in 1866. The refusal of the court to regard the letter-book as incomplete, defective, and misleading is a source of serious injustice, after such a lapse of time, to the parties concerned. Bartholow says in his letter of February 6, 1866, referring to the fact that Grove and Hardy had each been put in charge of a train:

> "This is necessary, for the reason that if some *American* in the employ of the Company is not constantly with the trains, there is great danger (if not a certainty) that the animals would be taken by the military authorities."[2]

In that same letter he refers to an earlier report made by him to Garth, which, of course, is not in the letter

[1] Opinion, 33. [2] Record, 203.

book. We have already seen that the man who was suspected by Bartholow of having planned the murder of Grove was himself a convicted murderer, who had secured leave to continue in the business by bribing the officers of the law. One of the leading merchants of Mazatlan, Mr. Echeguren, whose credibility is unimpeached, testified that he recollected—

> "To have heard from the first superintendent, General Thomas J. Bartholow, of the troubles and difficulties he encountered, soon after they occurred, on the road from this place to Tayoltita in *1865* and 1866, when attending to the transportation of the Company's machinery and supplies, *being constantly detained on the road by the said military people, and that he had to contend with them and to pay them large amounts of money, 'prestamos,' in order to be allowed to go on.*"[1]

If we had copies of Bartholow's earlier letters (that is, a complete instead of a defective and misleading press-copy book), we might be better informed as to these difficulties which he says in his letter of February 7th were so great that, if he had anticipated them, he would never have undertaken the task. It has been insinuated on the other side that he incurred expenditures which he did not report to the Company, and it is a fact that when he returned he left an indebtedness of over $25,000, after having spent more than a hundred thousand dollars in the Company's service, representing nearly $200,000 in United States currency. He had induced his friends to invest, and he was determined to persevere; and it may be that he was not so frank in stating his injuries and losses as he might have been.

The court then takes up the letters of De Lagnel, for the purpose of showing the real cause of the Company's

[1] Record, 104.

abandonment of the mines, and makes citations from one letter after another, including the statement in his letter of November 17, 1866, that "at present the mine is, I may say, *bare of metal*."[1]

But this was not one of La Abra Company's mines. The portion of the letter omitted from the opinion, and indicated by points, shows that De Lagnel had changed the subject and was speaking of a mine belonging to the Nuestra Señora Guadalupe Company, in which La Abra Company was a stockholder, and in regard to which Mr. Garth had written to him for information.[2] There are other references in De Lagnel's letters to this Guadalupe Company, its mine and its stock.[3] This inadvertence is important as showing how easy it is in dealing with such a mass of complicated details, a generation after the events, to make an inference unintentionally to the discredit of an international award which should at least have the benefit of all the presumptions attaching to a domestic judgment.

In its excerpts from De Lagnel's letter of January 5, 1867, referring to his previous draft for $7,000 (which, by the way was paid), the court stops at the following sentence:

> "The prospect at present is most favorable; the mill is in working order, the retort and furnaces ready for the separation and preparation of the silver for market, and the ditch so far advanced when I left that I expect to find it completed on my return. The stock of ore is large and I believe good, though that remains to be seen. Of the success I have strong hopes."[4]

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[1] Opinion, 34. [2] Record, 288.

[3] *Ibid.*, 241, in letter to "Dear Taylor"; 257, near bottom of the page.

[4] *Ibid*, 257.

The danger of doing injustice in such a belated review is again illustrated by the reference which the court makes to De Lagnel's letter of February 5, 1867, the last one (so far as the letter book shows) which he wrote to Garth before returning to New York. The court quotes from this letter what De Lagnel says about the delay in the completion of the mill and the need of drawing on the home office for $7,500 more, but overlooks the following remarkable statement which De Lagnel made in that same letter touching the outlook for the Company's enterprise:

> "*The mines are looking better, yielding more, and, I believe, richer metal.*" [1]

These were his last words from Tayoltita to the home office in regard to the condition and prospects of the Company's mines, as shown by the letter-press copy-book. The court does not notice the surprise that De Lagnel expressed in his testimony in this suit at the absence of several important letters of his, which he was sure he had written and copied into the letter book, such as those letters of May and June, each notifying Garth of a draft of $15,000 gold to pay off Bartholow's indebtedness; his letter giving an account of the assay of the Company's ores which he had made in conjunction with Mr. Elder at La Puerta, with results by which he was

[1] Record, 262.

Mexico's distinguished counsel, setting out in his argument to show how De Lagnel's letters gave a constantly darkening account of the mines to the Company in New York, inadvertently made the same omissions. After assuring the court that he has "examined De Lagnel's letters to Garth with some care," and that he had extracted all references which throw any direct light upon the value of the ores, he stops short with the following sentence from De Lagnel's letter of December 21, 1866: "The stock of ore is large, and, I believe, good, though that remains to be seen. * * * The prospect from the mines is not as good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition."

so greatly "elated;" and his letter in the fall of 1866, which he took it for granted he had copied into the letter book, giving an account of the "armed demonstration" which was organized in the wine shop of the local magistrate (Soto), opposite the Company's hacienda, and came so near re-enacting the Carmen and Rosario tragedy.

We come now to the evidence, as we understand the case, on which the Umpire rendered his award; and we propose to indicate, what we believe we can demonstrate on a rehearing to the satisfaction of the court, that that evidence, which was the ground work of the Umpire's award, still stands intact.

We have already made a citation from the award (*supra*) showing how the Umpire's mind was impressed by the misconduct of the prefect at San Dimas and the local magistrates at Tayoltita. His reference to the steps that were taken by the superintendent to obtain protection from the local authorities and (failing these) to his appeal, "through a lawyer of high character to the highest authorities in the State"[1] enables us to fix the time and the events which the Umpire had in mind. The superintendent was Exall, the lawyer of high character was Chavarria, and the official misconduct doubtless included the series of magisterial orders around which the controversy has waged in this case from the outset until it came into this court. The Court of Claims found that these orders were illegal and in violation of the Company's rights, and the learned Chief Justice was of opinion that the United States must fail in this suit unless these orders were proved to be forgeries. The authenticity of these orders is admitted, but there is a dispute as to the dates of the second and third. A copy

[1]Record, 8.

[2]Record, 493-497; 513, 516.

of the first—that of the prefect Mora—was introduced in Granger's testimony for the Company,[1] and another copy was introduced by the Mexican government,[2] and both of these copies gave the date of June 3, 1867. The Mexican government had access to the original, which was issued by Mora to Soto, and of which there was doubtless a record in the prefecture at San Dimas. The Mexican Commissioner insisted that the copies were correct as to the date, June 3, 1867.

But Soto's orders, the originals of which are on file in the Department of State, are somewhat obscure so far as the dates are concerned. The month "Julio" might be "Junio," but in both cases it looks more like "Julio." But there is no question that Soto's orders were issued either in June or July, 1867. They are described in question nine of Granger's deposition as "dated respectively 4th and 24th of July, 1867."[3] But the dates in the printed copies of the exhibit are July 4th and 5th.[4] The Mexican Commissioner insisted that the date of Mora's order, June 3, fixed the date of Soto's first order as June 4, because the latter refers to "the communication of *yesterday*, dated the 3d, received from the gefe politico of San Dimas." The originals of Soto's orders were before the Commission. Soto's second order refers to the first order (or some other) made twenty-four hours earlier. The United States, through Mr. Lines, agreed with the respondents in the Court of Claims that the true dates were June 3, 4, and 5, 1867, respectively. But after Mr. Maury came into the case he insisted (and Mr. Foster agreed with him) that the true dates were July 3, 4, and 5, 1867, respectively. The character and effect of the orders are the same whether they were issued in June or July. But if they were issued in June, they, or the official interferences of which they were the

[1] Record, 49. [2] *Ibid*, 124, 125. [3] Record, 49. [4] *Ibid*, 54.

1. Record, 400, 401.

culmination, might have been alluded to in Exall's letter of June 11, 1867, which does not appear in the copy book, although the copy book shows that it was written, and Garth's original letter of August 10, 1867, shows that he received it.

We come now to what we regard as the material evidence before the Umpire, which we will summarize here, going more into detail if a rehearing is granted.

There was no controversy as to the title of the Company to its mines or as to their purchase price or the expenditures for improvements. The Umpire accepted Mr. Collins' statement of the amount received and expended by the Company. Mr. Collins could have been examined, and compelled to produce the Company's records that were kept in New York,[1] but the Mexican agent (Mr. Caleb Cushing) decided not to call him. The Company's counsel, Messrs. Britton & Ely, had previously offered their witnesses to Mr. Cushing for cross-examination,[2] and the Mexican government subsequently re-examined three of them—Granger, Del Valle, and Avalos—the first-named four separate times, and filed their re-examinations with the Commission. The Umpire knew that there was no bar to such re-examinations on either side, and that they had in fact been made in the instances given. He was also aware that the claim had been pending before the Commission for five years, when it came to him on the disagreement of the Commissioners, whose opinions, with the briefs of counsel and the testimony on both sides in print, were before him. He was an accomplished Spanish scholar and had been in the diplomatic service of Great Britain in Mexico. Among the documentary evidence submitted to him there were four documents dated, as already stated, in June or July, 1867. These documents—their nature,

[1] 16 Stats., 7, [2] Record, 653, 667, 668.

purpose and effect—were discussed on pages 283–300 of the Appellant's Brief, in dealing with the 8th specification of the bill of complaint; Mr. Maury discusses them on pages 177–189 of his brief, and Mr. Foster on pages 73–80 of his. Mr. Zamacona discussed them in his opinion, pages 17–22.[1] But the court, as already observed, does not allude to them in terms, although they may be included in the general reference to "unpleasant occurrences such as the affair between Exall and Perez."[2]

It is important here to observe that the Umpire had before him the admission of the Mexican Commissioner that Mora's order, as translated into English, had assumed "the aspect of an act of despotism or a threat against property."[3] Here is the order as given in the record:

"GEFETURA POLITICO OF THE
PARTIDO OF SAN DIMAS.

"To Judge Gaudalupe Soto,
Sole Conciliador at Tayoltita:

From your communication this Gefetura has learned, with great displeasure, the abuses committed by these Americans, who at first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one third. Notify them through your court, and by my order, to at

[1] Record, 398–403.

[2] Referring to these orders, the Court of Claims said: "In the troubles incident to the disagreement, *the Mexican authorities failed to protect the officers and the rights of the Company to the extent they were entitled to;* but that such failure was for the purpose of driving the Company away and getting possession of the mines does not appear as alleged by the respondent." (Record, 831.)

And Mr. Chief Justice Nott, in his dissenting opinion: "There is but one way by which they (the United States) can have the international question re-examined, and that way is by alleging and proving that *the orders and letters of the Mexican officials, upon which the Umpire relied, and which made the international case presented to him, never existed,* and that the award was obtained by fraud effectuated not by perjury, but by *forgery.*" (Record, 850.)

[3] Record, 399.

least comply with the last contract, that is, to pay them one third in money, otherwise that they vacate the mines and allow the operatives to work them as they can, since neither the mining ordinances permit them to pay in goods only, nor will the government consent to such abuses, and it is already tired out with the thousand complaints upon this subject.

You will show this communication to the American in charge of that mineral.

Independence and Reform.

SAN DIMAS, *June* 3d, 1867."

Mr. Zamacona claimed that the words "otherwise that they vacate the mines and allow the operatives to work them as they can" should have been translated "otherwise let the operatives work the mines as they can," a distinction, as Judge Black remarked, without a difference, for "it would be difficult to understand," he said, in his argument before the Umpire, "how the Company could obey this order without vacating the mines."

"But (he continued) whether the translator misinterpreted the document or not, it is certain that the judge to whom it was addressed, understood it as we do, and immediately acted on it according to that understanding. In his communication to the Company next day, July 4, 1867, the judge, by order of the gefe, says imperatively, 'desde luego *desocupar las minas*—You will immediately vacate the mines'; and not having received an answer to this mandate within twenty-four hours, the judge repeats the order, and requires an arrangement to be made within two hours, and he concludes, 'if you come to no arrangement, you will vacate the mines, so that they [the Mexican miners] may lose no more time.'"

Further extracts from this argument before the Umpire are printed in the Record, 746–748.

The Umpire saw that as the Prefect's order was understood and applied by the local magistrate (Soto), it was—

as admitted by Mr. Zamacona—" an act of despotism or a threat against property." The Umpire was also informed that under Mexican law the Company had the right to suspend work altogether on any of its mines for four months in the year;[1] and, besides, that it was not the prefect and justice of the peace that had jurisdiction of such matters, but the " deputacion de mineria," as Judge Black observed, " established by law in every mining district."[2]

It must have been as plain to the Umpire as it would be to every unprejudiced person that no extensive operations could be conducted and no investment of capital made with any safety where, in flagrant violation of their legal rights, the mine owners could be ordered to make arrangements with their laborers within two hours or to vacate their mines. The Umpire saw that this was no exaggeration or misrepresentation by the Company. The extreme alternative is expressed in both of Soto's orders. In the first order it is, " that you immediately vacate the mines;" in the second order, you will vacate the mines " *within two hours.*"

Soto's orders were followed by a letter from the prefect, dated July 10, 1867 (as to the date of which there is no dispute), which, referring to a brief stoppage of work at the mines, closes as follows:

> " Nevertheless, if you don't choose to continue your work, give the *people* permission to collect ores in the mines, as *I will not hold myself responsible for*

[1] Record, 271: Exall was aware of the Company's rights, for he said in his letter of July 13th, 1867, to Garth: " If I am not able to get men in the other mines, I am privileged by the mining laws of the country to stop working in mines four months in the twelve." In his letter of Aug. 16, 1866, to Garth, De Lagnel refers to "Rockwell's translation of the mining laws of this country" [Mexico], of which he seemed to have a copy at the hacienda. (Record, 239.)

[2] Record, 746.

the consequences in a town where the people are without work."

At that time Mexico was in a fury against foreigners, including Americans. The Imperialists had been routed and Maximilian had been shot. "Mexico for Mexicans" and "*Mexican Mines for Mexicans*" were watchwords. The furore was notorious. Our newspapers were full of accounts of it, and the mass of testimony before the Umpire as to the hostility and threats of the people and officials against La Abra Company was not, as counsel on the other side have suggested, intrinsically improbable, but merely local symptoms of a prevailing condition.[1]

Del Valle, a Spanish merchant of high character, from whom the Company bought most of its mines, and for whose credibility both Mr. Zamacona and Mr. Maury have vouched, testified that Mora, the same prefect who issued the order of June 3d—

> "Was very badly disposed towards the Company, and that he even went so far as to say to the deponent that it was *necessary to break these Companies up and drive them away from there.*"[2]

The Umpire had also before him Mora's own testimony on this point. General Zarate, the Governor of Durango, had sent for Mora, evidently after Chavarria's appeal to him for protection on behalf of the Company, and Mora says, referring to that interview, that he told the Governor

[1] It appears in Foreign Relations, 1867, page 409, that Mr. Otterbourg informed Mr. F. W. Seward, May 25, 1867, that "an article in *La Union* of the 10th of May so completely exposes the passions sought to be aroused against the United States as to claim the attention of the Department,"

In the same volume, page 366, there is an extract from the *New Orleans Crescent* of March 7, 1867, in which it is stated that "the great idea in the Mexican mind is to get rid of foreigners *nolens volens;* and whether it is the French this year, or the people of the United States next, it makes but little difference,"

[2] Record, 78.

that the Company "consisted of Americans, and, like all other foreigners, was working for the ruin of Mexico."[1] He also adds that the Governor "refused it the protection that it prayed for."

Take Chavarria's testimony in the same connection, relating, as it does, to the situation at the mines in July or August, 1867. The Umpire's award, as already stated, shows on its face that he was impressed with the deposition of this witness, taken, as it was, in open court at Durango, the capital city of the State in which the mines were situated, and the residence of Mr. José M. Hernandez, the Mexican district attorney, who had charge of the defense against La Abra Company's claim.[2] The Umpire had before him the certificates of the eminent judge (Barraza), before whom Chavarria was examined, as to his high character, and as to some of the circumstances under which he was employed by Mr. Joseph G. Rice to appeal to the Governor of Durango on behalf of the Company.

Chavarria's testimony (to which the Umpire's attention was particularly invited by Judge Black in his argument for the Company[3]) showed, in brief—

> That in July or August, 1867, he had private business at San Dimas, and being personally acquainted with Marcus Mora, the prefect, they went together to see the Company's mines and works at Tayoltita, and conversed upon their condition; that

[1] Record, 89. [2] *Ibid.*, 122, 124.

[3] Mr. Maury says on p. 105 of his brief: "In his argument before the Commission Judge Black evidently treated the testimony of Exall and Mora as unworthy of consideration, for he said: 'This case cannot be decided against the claimant without pronouncing *Chavarria* a perjured man.'" But this is clearly a *non sequitur*. Mora's testimony is certainly remarkable, but not more so than his order of June 3 or his letter of July 10, which need no corroboration, for they are admitted to be, with Soto's orders, authentic documents in the case.

Mora confided to him his plan of driving the company out and obtaining possession of its mines, and offered him a share, which he refused; that from this conversation with Mora and what he witnessed on the second day of his visit he became satisfied that the prefect and the mining people were strongly bent on annoying the Company and driving it away; that they were continually provoking quarrels with it; that the prefect and some of the workmen stated that they believed the Company to be annexationists; that it was therefore hateful to Mexico, and that they thought best to drive it away anyhow; that for this purpose the authorities instigated the laboring people, on the pretext of their wants, not to work for the Company; that the Company's ores were frequently stolen, and that it was not legally protected by the Gefetura, where the superintendent usually made fruitless complaints of the thefts.

That on his return to Durango he met Macario Olvera on the road [*Soto's son-in-law, who succeeded Mora as prefect*], and that they conversed together in regard to the expulsion of La Abra Company, and Olvera acknowledged to him the plans and intentions existing at Tayoltita on the part of the authorities and operatives, and that he was interested in that hostility in combination with the prefect, whom he was going to replace.

That on the second night of his visit to Tayoltita there was a meeting of the Company's workmen, at which the greatest disorder prevailed, and that the head miners, by order of Mora, mutinied against the Company and refused to work any longer in the mines.

That subsequent to March, 1868, he conversed with Olvera in Durango, and also with Mora on his frequent visits to him when he was in prison, and was told that the Company had finally been compelled to abandon their mines at Tayoltita, owing to the concerted hostility against it, in March, 1868.

That he was employed by Mr. Rice, of California, as Exall's lawyer to solicit, and that he repeatedly solicited from the State government protection for

> the Abra Company to suppress the robberies and outrages which the Company were experiencing at Tayoltita, but all to no purpose, as after innumerable steps and measures the Executive of the State never even so much as requested the authorities at San Dimas to comply with their duties. The only answer given was that the government of the State, at whose head was Francisco Ortez de Zerate in 1867, would not meddle in private matters.

There is much more in this deposition, but the foregoing summary will show what the Umpire had before him from this source in regard to the character and purposes of Mora and Olvera, their conduct towards the Company, and its futile appeal to the higher authorities for protection and redress.[1]

Now, at this point the court will see what the Umpire meant when he said, in denying the Mexican agent's motion for a rehearing (which had been made on the ground that all the witnesses for the claimant were perjured)—

> "Unless there had been proof of perjury the Umpire would not have have been justified in refusing credence to the witness on the one side or the other, and could only weigh the evidence on each side and decide to the best of his judgment in whose favor it inclined.
>
> If perjury can still be proved by further evidence, the Umpire apprehends that *there are courts of justice in both countries by which perjurers can be tried and convicted, and he doubts whether the government of either would insist upon the payment of claims shown to be founded upon perjury.*[2]

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[1] Mora, it appears, was dismissed and imprisoned, but not for offenses against the Company, and Olvera was killed a year or two after the abandonment.

[2] Ex. Doc. No. 103, H. R. 48th Cong., 1st Sess., 127, 128. The context shows that the Umpire meant by "shown" *judically shown.* Gardiner was indicted, tried and convicted by the United States Government for palming off a fraudulent and fictitious claim upon the commission organized under the treaty of Guadalupe Hidalgo.

The Umpire knew that Chavarria could have been re-examined by the Mexican Government or prosecuted for perjury if it was really believed that he had perjured his soul and betrayed his country in an international arbitration. But see how his testimony was corroborated by another Mexican witness whose depositions were before the Umpire. Avalos, vouched for by Dahlgren and Martin, successive superintendents of the Durango Company at San Dimas,[1] in their testimony before the Umpire, testified that he was present at that identical meeting which Mora addressed. He said:

> "At another time, I think in the month of July, 1867, when I was engaged in bringing down to the mines the ores belonging to La Abra Company, I met all the Barrateros and men employed in and about the mines going down to the hacienda, and the Barrateros and all the other men stopped and talked with me, and they all said that *an order had been sent up to the mines by Marcos Mora, gefe-politico of that district, to stop work, and ordering them all to Tayoltita.*
>
> "When I came down to the town in the evening the gefe was at the house of Guadalupe Soto, and I heard the gefe (Marcos Mora) tell these men that the Company did not work as he (the gefe) wanted them to work, and *employ all the men who were out of work at Tayoltita,* and that *he would not let any of them work if they did not employ all of them;* and he said at the same time that *he was going to take the mines away from the Company and give them to all the people to work them as they pleased;* and that night I remember well I did not sleep at all, for the words used by the gefe-politico to the crowd of miners were well intended and had the effect to excite the Mexican miners and men out of employment to riot and perhaps to something much worse than that, and I expected serious trouble that night for the Company.[2]

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[1] And vouched for by Dahlgren in the Senate investigation.

[2] Record, 52.

The Umpire had also before him a deposition purporting to be a re-examination of Avalos by Judge Quiros on behalf of the Mexican government, *in which no question was put to him in regard to the conduct of the prefect*, and in which he asserted *that it was true that the people had prevented the Company from working.*[1]

There was, furthermore, a third deposition of Avalos before the Umpire, reasserting the truth of the original deposition in every particular, and making the following statement (as remarkable as that of Ex-Governor Galan's which was also before the Umpire[2]) in regard to the methods that Mexico employed to defeat the claim of the Company:

> "I never gave my testimony in this case at San Dimas, or at any other time or place, of my own free will and accord, except before Consul Sisson at this port [Mazatlan], in the month of May, 1870, in favor of the Abra Silver Mining Company as I have stated; nevertheless, it is true that Quiros, the judge at San Dimas, sent for me to give a deposition before him last summer, in connection with this case, and he sent me word that if I did not go to court, and *give evidence against the Abra Mining Company, he would fine me one hundred dollars and otherwise punish me.* I went to the court and there found a multitude of natives of the country armed, and some of them threatened me with violence *because the judge told them that I had given my deposition in favor of the Company and against Mexico.*
>
> "The judge wrote a deposition for me to sign, a part of which was not true, but I did not sign it because I could not write my name well enough to do so, otherwise I might perhaps have signed it or put my mark to it, or to anything else they might have written, as I would not have dared to resist under the circumstances, as the general feeling prevailing there was one of violence, and those present

[1] *Ibid.*, 131, 132. [2] *Ibid.*, 188.

were too numerous and incensed against me for having told the truth in favor of the Company two years before."

But the Umpire had also before him the testimony of Soto himself, given *on behalf of the Mexican government*, in regard to these orders and the circumstances under which they were issued:

"Question. When you were judge in Tayoltita, in 1867, did you direct and issue the communications dated respectively the 5th and 4th of July, copies of which have been shown you, and which appear on page 6 of these proceedings, he replied that *he is certain of having issued such communications to the administrator of the Abra establishment*, and that he did so because there had been *a rising of the people to compel him to* * * * ."

"On this deposition being read to him he added that the communications which he issued were in consequence of the fact that, besides the disturbance on the part of the people, *he had received orders* to that effect from the political chief, Marcos Mora; *all in consequence of the failure of the superintendent to contract with the operatives for working the mines.*"

There was other evidence before the Umpire, showing that this attempt by the local magistrates to dispossess the Company was not made because it failed to pay its workmen, as alleged falsely since the award was rendered, but because the Company did not employ all the unemployed laborers that had flocked to Tayoltita. Nor was the complaint that the Company paid largely in goods anything but a pretext, for that was a matter of contract, and, as already stated, the Company had a right, under the law, to stop work altogether in any of its mines four months in the year.

Now (following the evidence before the Umpire, in sequence of time), it was proved to him that this same

Soto, two or three months after these orders were issued (*and when his son-in-law, Olvera, had become prefect at San Dimas*), seized upon the Company's Guadalupe hacienda, a small piece of level ground convenient to the mines, and proceeded to erect upon it reducing works, to which the Mexican miners could bring the best of the Company's ores (which they were only too ready to steal) for reduction by him. This he did under cover of a false and fraudulent "denouncement" on the ground that the Company had abandoned the piece of ground in question. It was also before the Umpire that, instead of promptly deciding so plain a case, Olvera gained time for his father-in-law by forwarding the papers to the Superior Court at Durango, where the denouncement was finally declared illegal. This was judicial proof to the Umpire that the local magistrate, whose duty it was to administer the law, had violated it to the Company's peril for his own gain. It was also before the Umpire that the higher authorities, instead of dismissing Soto, or even reprimanding him for such malfeasance in office, kept him as magistrate at Tayoltita, and thus encouraged and aided him in his attempts to drive the Company out. "The higher courts," said the British consul at Mazatlan, in his note of June 10, 1876, to the President of the Rosario and Carmen Mining Company, "were unwilling to punish their judges, and thus they became petty dictators; foreigners had no redress, and if they complained were treated as aggressors, as in the case of your employees." (Report No. 700, H. R., 45th Cong., 2d Sess.)

There was also evidence before the Umpire conclusively proving that after Perez had kept Exall shut up some nights by himself in the pest house, he executed a lease of the Guadalupe hacienda to Soto "to conciliate him.[1]"

[1] Record; 52 foot of page.

Soto produced this lease in evidence, with its extension by Granger.[1] Then there was the testimony of various witnesses showing that after Exall had gone, Soto and Granger carried on the business at the old stand. Of course, Soto did this, so the Mexican witnesses said, and so said Soto, by *Granger's permission;* and some of these Mexican witnesses also said that the miners who took the ore from the Company's mines to Soto's reduction works did so with *Granger's permission.*[2] The meaning of all this was doubtless clear to the Umpire, for he knew from other evidence, such as that of Martin and Avalos, that Soto had moved with his family into the Company's establishment, and was still living there, in possession and at work, in 1870. The agent of the Company, General A. W. Adams, found this Mexican magistrate so in possession in May, 1870, when he visited Tayolita.[3]

But the Umpire had Granger's pretended extension of Soto's lease before him, and noticed that it was not executed by him as agent for the Company.

With these proofs before him—the orders of ejectment speaking for themselves—the Company's appeal for protection and its denial established, the illegal character of the seizure of the Guadalupe hacienda by Soto judicially proved, and its purpose so evidently incompatible with the successful conduct of the Company's operations, the subsequent imprisonment of Exall and the threats against his life, all these things culminating in Soto's actual and continued possession *of the Company's property after Exall's departure*—what could the Umpire do in face of all these things but decide that the Mexican Government was responsible in damages?

Suppose Exall's letters had been before him. So would Exall's explanation. Indeed, the very defense that these letters support was made before the Umpire, namely, the

[1] *Ibid.*, 132. [2] *Ibid.*, 129, in two places; 131, 133. [3] *Ibid.*, 185.

impecuniosity of the Company and the poverty of the ores. But would that have changed the fact that the local officials believed that the mines were rich and should be owned and operated by Mexicans? Or would it have altered one iota any illegal act of Olvera, Perez, or Soto? Their misconduct was proved beyond a doubt. So was the failure of the higher authorities to protect the Company in its legal rights.

Why was the Company short of money? It was potentially rich—its officers and stockholders could and would have advanced whatever was required for the development of its property, but protection for life, liberty, and capital was necessary. The new evidence shows—and would have shown to the Umpire—that the Company's capital had been exhausted by unexpected expenses, and that it was necessary to reorganize and bring in more money—a thing that is often done; a thing that was done several times by the Durango Company before its tunnel was completed. The plan of tunneling its mines, not La Abra alone, but La Luz and Rosario, had been in contemplation from the outset. It is recommended by Del Valle in a letter to Bartholow, giving an account of the previous yield of the mines and the character of the ore—a letter which belongs to the case and is on file among the papers in the Department of State, but for some reason has been left out of the transcript. This plan of tunneling, so as to get below the old workings, was never abandoned until the impossibility of continuing the work for lack of the necessary protection was apparent. The official orders of June and July—the spirit behind them that showed itself in Soto's seizure of the Guadalupe hacienda and the imprisonment of Exall by Perez, and the threats and menaces of Olvera—made it impossible either to raise more funds in New York or make a proper application of them at Tayoltita. If we had Exall's letter of June

11 to Garth or Garth's letter of September 30 to Exall—the former of which is not in the press-copy book and the latter of which was withheld by Granger—the situation would be clearer. But we do have, and the Umpire would have had, Exall's letter of July 13th and 14th, in which he says—"*the officials are getting daily more troublesome; their demands are all foolish and very unjust;*" and we do have Garth's letter of August 10th, in which he speaks of the possibility of abandoning the Company's enterprise and property, *because they "will not be protected in our (their) persons and rights in that country."* That letter concludes as follows:

> "If so, you must take all necessary and legal measures, by protest and otherwise, to secure our claim against the government." Mr. Rice, no doubt, will be of essential service to you in any measure of this sort, and we would advise you to consult freely with him.
>
> "The directors of our Company are trying to reorganize and to raise money to pay off the debts, and to prosecute the work anew if possible, but, I am constrained to say, with but little hope of success. Meantime you must get out all the means you can from the ores, cut down all expenses, keep out of debt, and do what you can to protect and preserve the property of the Company."[1]

It will be observed how significant this letter is in various ways. It corroborates the statement in Chavarria's testimony that he was employed by Rice as Exall's lawyer to appeal to the Governor of Durango; it shows that the Company intended to hold the Government of Mexico responsible for its acts and omissions; that measures were on foot for increasing the capital, and that the Company's instructions to its agent were *not to*

[1] Record, 286.

abandon, but to do his utmost "to protect and preserve the property of the Company."

But money could not be raised when protection was not assured. Garth's testimony on this point is significant:

> "Question. What effect, if any, did the statement in Exall's letters of July 13 and 14—that the officials were daily becoming more troublesome, and that their demands were foolish and unjust—have upon your efforts to raise money?
>
> "Answer. *They had the effect of preventing any further advances in that direction.*"[1]

Now, it seems from Exall's explanatory affidavit that when he saw, from the conduct of the local magistrates, that the expulsion of the Company was only a question of time, it occurred to him that through his friend, Granger, who was a British subject and had become a member of Soto's family, he could secure some advantage for himself by inducing the Company to abandon its property voluntarily, and so (he says) he began, in his correspondence with the home office, to exaggerate his necessities and depreciate the value of the property. Perhaps this may seem improbable, but human motives are mixed, and truth is sometimes found not on the surface, but at the bottom of the well. Now, the books that Mexico withheld for so many years show that Exall's statement in his explanatory affidavit is true; that he did represent that he was more in need of funds than he was. The books show that although he never received a dollar from the home office, he met the expenses of the Company's business, including nearly $3,000 in taking ore from La Abra mine alone, without running into debt. When he left Mexico he left the Company free

[1] Record, 733.

of debt in that country. He borrowed $250 in Mazatlan, but that was on his own account, and it is in evidence that the Company paid him every dollar it owed him. His statement in his letter of December 18 that he had to borrow $1,492 in Mazatlan was not true. He was concealing his receipts—receipts which appear in the account books. August 5, 1867, he wrote: "The returns I brought down from mint I brought down to E. P. & Co. to settle money borrowed from them to buy goods; their bills will be due next month, and most of returns from present run will have to be paid then. *I hope to be able to settle up all the indebtedness of the Co. both here* [Mazatlan] *and at the mines.* E. P. & Co. are the only ones I am owing here."[1]

In his next letter to Garth, copied in the impression book and dated 6th October, 1867, he says: "I was much disappointed that my urgent demands for money were not favorably answered." But he had made no such urgent demands, unless there is a missing letter between August 5 and October 6. He says: "I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand. *That is now entirely exhausted. I have neither money, stock, or credit.*" His next letter shows that his stock was not even then exhausted, and the account books show that in September he received $1,356 from the mint at Durango. Of this he says nothing, but he does say that by the last steamer (sailing about September 15) he "sent a full statement of business of hacienda—the *runnings, returns, and expenses of the mill,* account of ores," &c. There is no such statement in the letter book. In his next letter, 17th November, 1867, he says that "Cullins intends to commence suit in the

[1] Record, 273.

courts here for his year's salary," and that he is trying to get him to wait till the next mail in the hope of a remittance. He also says he has no money and that his stock is almost entirely exhausted. But the account books show that he received in November $923.16 from the mint at Durango.

In his next letter, 18th December, 1867, he said he had *borrowed* $1,492 at Mazatlan, out of which he had settled with Cullins. Now, he had said in his letter of 6th of October, that he had neither money, stock, nor *credit;* and, as already stated, he left no debt of the Company in Mazatlan. He also said that he was doing nothing at the mines, and had only one person left with him, but the account books show that in that month the mill was debited $563.09 for merchandise, in which the wages of the workmen in the mines as well as at the reducing works were paid.[1]

In his next letter, 24th January, 1868, he said he was being sued by agents of the Bank of California. But that was a falsehood. He also said that by the December steamer he had sent Garth a telegram from San Francisco, and that the parties to whom he had sent it in that city had sent it on to New York. *No such telegram or letter to anybody in San Francisco is copied in the letter book.* Garth testifies that he never received any such telegram, and that he had no recollection of receiving the letter of January 24th. He also testifies that if he had received any such letter he certainly would have answered it. We beg the court to read the whole of his testimony in regard to this letter, and especially in regard to the question in it, whether he was going to let the Company's interests in Mexico "go to the dogs."[2] There is something

[1] Record, 745; stipulation, paragraph 2.

[2] *Ibid.*, 706, 707.

very mysterious about that letter. It is one of those pasted into the book and, unlike all the other letters written at Mazatlan, it is dated more than a week later than the monthly sailing of the steamer from that port. It is not to be forgotten that the press-copy book was in Granger's hands for ten years before he delivered it to the Mexican government, and that before its delivery he had made a contract with that government, under which he was to receive the stipulated price, $3,500, only in case the evidence he furnished should entirely subvert the award. His handwriting was so like Exall's that the only witness who identified that of the latter confounded it with Granger's.[1]

If the letter-book had been before the Umpire he would have seen Exall's appeals in it for protection from Soto's illegal seizure of the Guadalupe hacienda, and from the disruption of the Company's business, which that magistrate's plan of operations entailed; and he would have had new and striking proof of collusion between the local authorities, making it impossible for the Company to continue its work. We beg the court to read Exall's letters of November 28 and December 5, 1867, to the prefect, Olvera, and his letter of the latter date to Mr. Del Valle. After stating his suspicions that the other authorities had committed themselves in some way in Soto's favor, and would do "*great* injustice" to the Company, besides violating the laws of the country, he said:

> "The reason of the statement given above in reference to committal, is, he Soto seems so confident of success, and in addition *has a force at work daily.* You know the great injury the putting up of tahonas by the above-named party would do my Company, as, of course, *all the metal from this Company's mines, and all the surrounding mines would be stolen and*

[1] Record, 177.

taken to him, and in fact, there are many other ways in which my Company would suffer if he succeeds in getting possession."[1]

Exall had previously written to Del Valle begging his assistance at Durango in this matter, but this earlier letter is not in the copy-book.

In his second letter to the prefect, Exall says:

> "On last Saturday Don Guadalupe *put men to work on the hacienda grounds;* this I was confident he had no right to do till decision was given in his favor, on his denouncement, and he was legally put in possession. Accordingly, I laid my complaint before the judge here (Don Nicanor Perez) *who decided that Soto must suspend work*, but afterwards I learned that *he told Soto to go to work, which he did, and has since continued working. This should and ought not to be* * * *. Soto contends *that he works by authority of an order received from you.*"[2]

Mr. Evarts, in his examination of the case, was doubtless impressed with this proof in the letter book that a Mexican magistrate could seize property of citizens of the United States in such a way, and, after his seizure had been pronounced illegal by the higher courts, continue in office and power. He might well hold that although the measure of damages, so far as the value of the ore on the "patio" was concerned, might be affected by the letter book, it strengthened rather than weakened Mexico's liability for the misconduct of her officers.

On a rehearing we can show that in other respects the letter book has the same tendency; *e. g.*, that De Lagnel's letter of June 6, 1866, to Clarke,[3] an important witness before the Commission, corroborates the latter's testimony, and, taken with the extracts from the Com-

[1] Record, 279. [2] Record, 278. [3] Record, 227.

pany's books,[1] shows conclusively that he made the payment stated by him for the release of one of the Company's supply trains. So, also, does De Lagnel's letter of November 17, 1866, in which, referring to a "change of rulers," he says:

> "One thing appears clear—that we will not have *to pay duty to Imperial customs and then do the same to the Liberal officers.*

We desire to be reheard on the relations which Granger sustained to Exall on the one hand and to the Mexican officials on the other, in view of the weight which the court attaches to the so-called "autograph letter" of February 26, 1868. It can be shown that several years before the award was rendered, and while the Company's claim was pending (and at stake) in the Commission, Granger tried to collect from the Company what it did not owe him, and, after having been defeated in a suit,[2] became its implacable enemy and entered into that unexampled agreement with the Mexican Government, which is described in the evidence, for the subversion of the award.[3] Granger was for sale and the Company refused to buy him, although its claim for such a large amount was pending undecided in the Commission.

Counsel is conscious of the extraordinary length of this petition, which perhaps is to be excused, if not justified, on account of the exceptional importance of the case and the impossibility of any adequate discussion of the facts in the time allowed for the oral argument in court.

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[1] *Ibid*, 753. [2] Report 2705, Senate, 50th Cong., 1st sess., 170.

[3] Record, 571–575.

The petition is respectfully submitted in the conviction that if a rehearing is granted, it will be shown to the satisfaction of the court that private right, as well as international justice, requires that the award should be carried out as provided in the treaty.

CRAMMOND KENNEDY,
Solicitor and of Counsel for the Appellant.

We, J. M. Wilson, John C. Fay, and E. I. Renick, of counsel with the Appellant, certify that we have examined the petition for a rehearing in this cause prepared by the Appellant's solicitor and counsel, and that we believe that it states grounds on which the cause should be reheard as prayed for in the petition.

J. M. WILSON,
JNO. C. FAY,
E. I. RENICK, *of Counsel.*

WASHINGTON, D. C., *February* 7, 1900.

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No. 498.
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Clerk

In the Supreme Court of the United States.

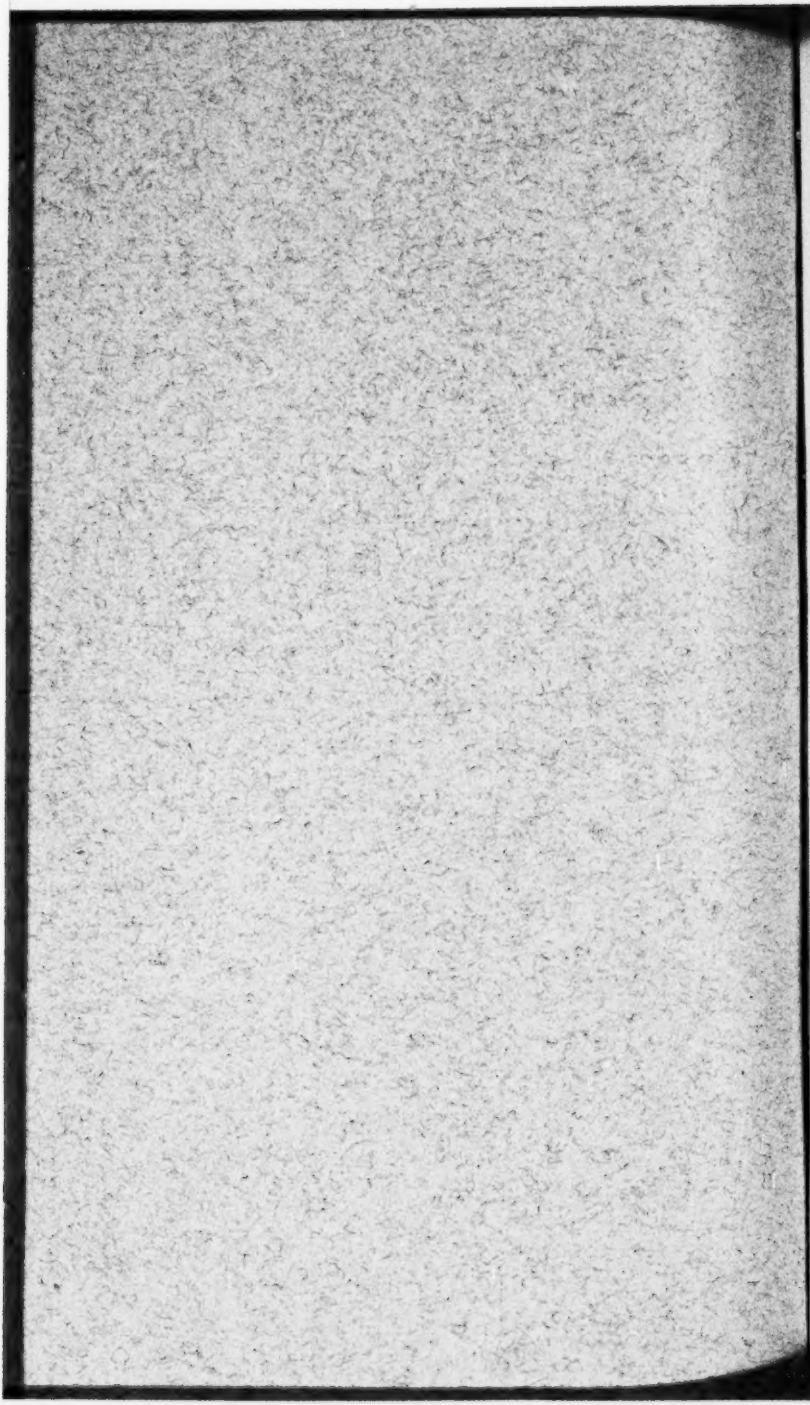
OCTOBER TERM, 1897.

LA ABRA SILVER MINING COMPANY, appellant, *v.* THE UNITED STATES. } No. 498.

APPEAL FROM THE COURT OF CLAIMS.

ON MOTION OF APPELLANT FOR AN ORDER DIRECTING "THAT THE CONSTITUTIONAL OBJECTIONS TO THE JURISDICTIONAL ACT BE FIRST HEARD AND DETERMINED."

WM. A. MAURY,
Special Assistant to the Attorney-General.



In the Supreme Court of the United States.

OCTOBER TERM, 1897.

LA ABRA SILVER MINING COMPANY, appellant, *v.* THE UNITED STATES. } No. 498.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLEE IN OPPOSITION TO THE MOTION.

This motion is based on what appears to us a fundamental misconception: That the special act of Congress, under which this suit was brought, casts upon this court, on appeal, the onerous duty of investigating, *de novo*, the great mass of confused, conflicting evidence in this case, for the purpose of determining the pure question of fact, whether "fraud effectuated by means of false swearing or other false and fraudulent practices" has been brought home to the appellant, "its agents, attorneys, or assigns."

We propose to show that Congress did not intend anything so unreasonable and so obstructive to the other business of this court, having provided for a final trial of the

facts by the high court to whose findings in matters of fact, under its general jurisdiction, the United States submits *as final, no matter how important the matter in controversy may be.*

The jurisdiction of the Court of Claims, in this case, was conferred by a special act of Congress approved December 28, 1892 (27 Stat., 409, c. 14), entitled "An act to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight.'" (See Appendix hereto, where the act is given in full.)

The purpose of the act is clearly indicated by its recitals, which are as follows:

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and
>
> Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated."

The act then proceeds (Sec. 1) to authorize and direct the Attorney-General "to bring a suit or suits in the name of the United States in the Court of Claims against the La Abra Silver Mining Company and all others making

claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns." * * *

The act then proceeds (sec. 2) to confer jurisdiction on the Court of Claims, as follows:

> That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said mixed commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

Section 3 is the provision under which this appeal was taken, and is as follows:

> That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party *within ninety days* from the rendition of such final decree *under the rules of practice which govern appeals from said court;* and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

To say now that this appeal involves the right of appellants to have a hearing *de novo* on the facts, as in equity causes generally, is to ignore the requirement of section 3 that an appeal to this court shall be "*under the rules and practice which govern appeals from said court.*"

"The rules of practice" referred to were prescribed by this court.

The first of these rules contains these provisions:

RULE 1.

In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court *upon the following record, and none other:*

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. *A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them;* and a separate statement of the conclusions of law upon said facts, upon which the court found its judgment or decree. *The finding of facts and conclusions of law to be certified to this court as a part of the record.*

If now the words of the statute are to have effect, how can there be a hearing *de novo* on the facts? How can there be *any hearing at all* in the absence of a finding of facts in the nature of a special verdict? The rule is peremptory that appeals shall be heard on records as prescribed by it, and "NONE OTHER," and the statute, by adopting the rule, has withdrawn from this court all control over it, so far as this case is concerned.

If Congress had intended that this court should be involved in a tedious investigation of the confused, conflicting, and voluminous evidence in this case, it would seem impossible to believe that the act would have provided that an appeal in the case should be subject to the rules of practice governing appeals from the Court of Claims.

When we consider that the questions of fact involved in this case had been before Congress for over ten years, perplexing that body and consuming a vast amount of time, to say nothing of expense, it is hardly probable that Congress was so indifferent to the public interests as to require this court to review on the facts any final decision the Court of Claims was to render in the case.

What such a review means is indicated in the opinion below on the merits, when the court speaks of the impossibility of dealing "in detail with the testimony" and of its extraordinary volume. The brief in support of this motion also foreshadows the severity of the labor involved in a hearing on the facts, where it says that "much time and attention will be required for a proper discussion and consideration of the questions of fact and law involved in the case," and that a hearing on the merits will be "*long and laborious.*"

It is safe to say that if the court enters on the facts of this case it will do little else from March 7, the day fixed for the hearing, to its adjournment.

It is conceded that there is no finding of facts by the court, nor is it pretended that appellant asked for any such finding, so that there has been an entire failure on the part of appellant to observe the requirements of this court in rules 4 and 5, regulating appeals from the Court of Claims, which are as follows:

RULE 4.

In all cases in which either party is entitled to appeal to the Supreme Court the Court of Claims shall *make and file their finding* of facts, and their conclusions of law therein, in open court, *before or at the time they enter their judgment in the case.*

RULE 5.

In every such case each party, at such time *before trial* and in such form as the court may prescribe, shall submit to it *a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.*

Outside of the questions of law arising upon the act of 1892, under which this suit was brought, *nothing remains in the case for determination* but the statutory issue:

Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Com-

pany was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

This case bears no resemblance to the case of *Harvey* v. *United States* (105 U. S., 671), where this court held that the special act of Congress under which the suit was brought conferred equity jurisdiction on the Court of Claims, and that, on appeal, this court must determine the facts as well as the law applicable thereto.

In that case, it will be observed, the special act in confering jurisdiction on the Court of Claims to proceed "*as a court of equity jurisdiction*," and, if need be, to reform the contracts in question, and render the proper relief, did not use any language indicating that an appeal in the case to this court should be conducted on rules of procedure different from those applicable to cases in equity generally. (See the act, 19 Stat. 490, c. 279.) And the same may be said of the case of *United States* v. *Old Settlers* (148 U. S., 427, 464), where this court reviewed the facts on appeal.

Never did a piece of legislation receive closer scrutiny or more anxious consideration than the act conferring jurisdiction of this case. Every word of it was pondered, and therefore should have its *full effect*.

The assumption that this is a suit in equity, in the technical sense, is gratuitous. The act does not so denominate it. The Attorney-General is merely "authorized and directed to bring *a suit or suits* in the name of the United States."

It is true that fraud is cognizable in equity, but it is also

cognizable at law; there being a concurrence of jurisdiction on the subject between courts of law and of equity. Nor was there any reason, growing out of the complicated inquiry involved, for investing the Court of Claims with jurisdiction in equity, because the methods of investigation used in that court are *precisely the same as those employed in courts of equity.*

It is true that the act (sec. 2) authorizes the Court of Claims to make "all interlocutory and final decrees" "according to the principles of equity and justice," and "to enforce the same by injunction or any proper final process," and "in all respects to proceed in said cause *according to law and the rules of said court*, so far as the same are applicable."

But when it is considered that Congress was dealing with an almost unprecedented case, which had baffled the executive and legislative departments of the Government, and was finally to be subjected to the judicial power of the Constitution, it seems clear that Congress did not have its attention fixed on any particular description of courts known to our judicature, but intended to create a jurisdiction *sui generis* and fitted to the extraordinary case before it, regardless of the landmarks of jurisdiction.

If Congress had proposed to make the Court of Claims a court of equity for the purposes of this case it would have so declared, as it did in the special act involved in the case of *Harvey* v. *United States* (*supra*). Nothing relating to jurisdiction would have been left to implication in a piece of legislation so intimately connected with

the relations between the United States and a friendly power, and which had been violently assailed because, as alleged, it trenched on the province of the Executive, violated international law, and trampled under foot the principle of *res judicata*. If the foregoing views are correct, it follows that the motion is without support, and should be denied.

WM. A. MAURY,
Special Assistant to the Attorney-General.

APPENDIX.

AN ACT to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which said court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

Approved, December 28, 1892. (27 Stat. 409, c. 14.)

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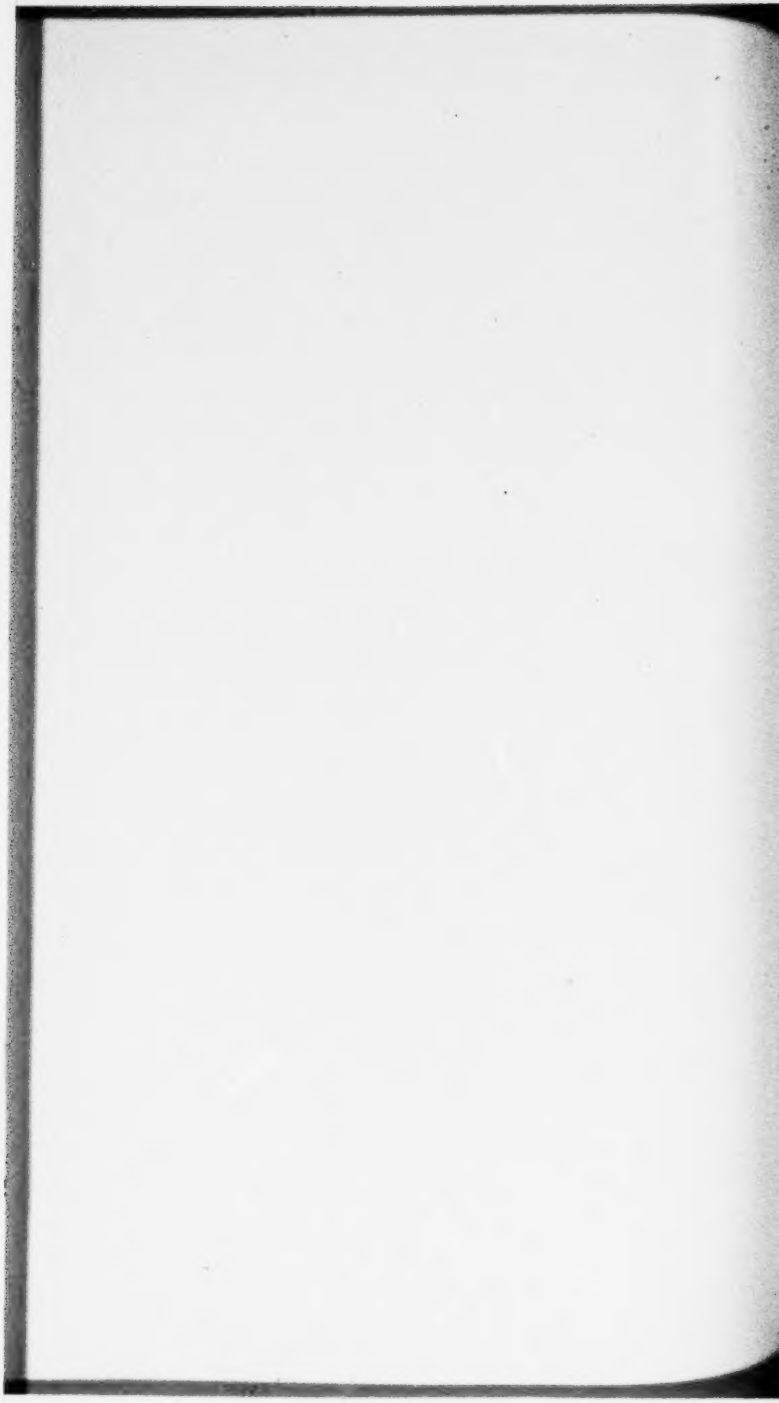

No. 189. 29.

Brief of Atty. Gen. (Maury) for E

Filed Nov. 26, 1898.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

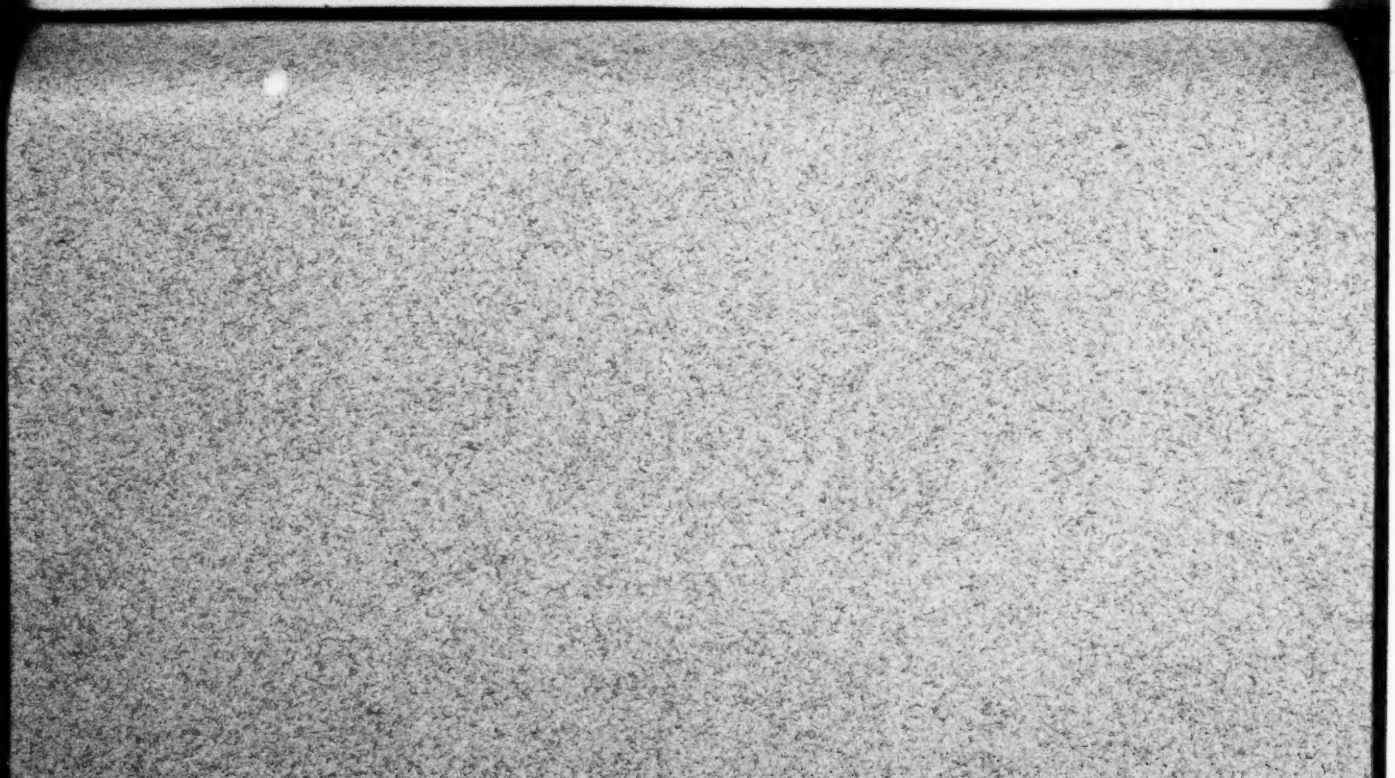
OCTOBER TERM, 1898.

LA ABRA SILVER MINING COMPANY, appellant, *v.* THE UNITED STATES.	No. 189.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

WM. A. MAURY,
Special Assistant to the Attorney-General.



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to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns," and in case it should be so found by the court as to the whole or any severable part of said award, that a decree should be entered barring and foreclosing the claimants under the award or such part thereof from any right to the money received from the Republic of Mexico by the United States for or on account of said award.

The Court of Claims is clothed by the act with jurisdiction over the subject in the section following:

> SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

(See Appendix A for the act in full.)

The bill or petition (pp. 1–22) begins by referring to the provisions of the treaty of July 4, 1868, between the United States and Mexico, which had for its principal object the establishment of a commission to determine the validity of claims of

the citizens of either Government against the other, and states that such a commission was duly established:

That among the claims against Mexico presented to the commission by the United States was that of La Abra Company, amounting to $3,000,030:

That the commissioners disagreed upon the claim, which thereupon went before the umpire, who made an award in favor of the company for the same of $683,041.32, principal and interest, the same being in the nature of damages falsely alleged to have been suffered by the company in consequence of having been driven from its silver mines and out of Mexico by the authorities of that country, and of having been despoiled of its property by illegal exactions and seizures, as appears by the proceedings in the case annexed to the bill, and designated Exhibit A:

That after the making of the said award the falsity of the evidence on which it was based became apparent by the discovery and the delivery into the hands of Mexico of the suppressed letter-press copy book kept at the company's mines during the time covered by the claim, and other documentary evidence, all of which is annexed to the bill and designated Exhibit B:

That the executive department of the United States Government became deeply impressed by the after-discovered evidence of fraud and perjury brought to its notice by the Government of Mexico,

and laid the same before Congress with the recommendation that provision should be made for a thorough and effective examination into the charges of fraud, the department itself being without the necessary means for conducting such an examination:

That the result of this action of the Executive was the passage of the act of December 28, 1892, above referred to.

The bill then proceeds to point out the various particulars of the Abra claim which are negatived and falsified by the said after-discovered evidence, and to show that said claim was in every essential particular supported by false and perjured testimony, which was known to be such by the said company, and, consequently, that the "whole of the said award was obtained by fraud, effectuated by means of false swearing, subornation of witnesses, and other false and fraudulent practices on the part of the said defendant company, its agents, attorneys, and assigns."

The bill devotes considerable space to an enumeration of the large number of persons who claim interests in the said award on one pretext or another, making them parties, and seeks discovery from each of them with reference to certain particulars.

The bill states the character of the controversy that has arisen between the United States and the parties claiming interests in the said award.

The bill then prays for full discovery, and that the defendants and each of them may be restrained and enjoined from setting up any claim to any part of said award or of the undistributed proceeds thereof; and that the said award may be declared, by decree of court, to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys, and assigns; and then follow the prayers for general relief and for process.

DEMURRER.

La Abra Company and several other defendants demurred to the bill (pp. 311–315).

The demurrer, after full argument, was overruled, "with leave to the respondents to answer, if they so elect, on or before the first day of July next" (p. 317. See opinion of the court, pp. 318–356); but this order was afterwards modified by substituting June for July (p. 423½).

ANSWER.

Availing itself of the privilege extended by this order, La Abra Company filed an elaborate answer to the bill (pp. 424–460).

This answer being under the common seal of the Abra Company, a body corporate, and, therefore, not evidence against the bill, and, furthermore, being

mostly argument, need not, it is conceived, be particularly noticed, at least in this part of the brief.

The cause being at issue, a large amount of testimony was introduced on both sides, and the cause having come on for hearing was elaborately argued at the bar; but the chief justice having died while it was under consideration, and there being some "difference in the minds of the judges who sat in the former hearing," the cause was remanded to the trial calendar (p. 803) and again elaborately argued at the bar.

DECREE.

On June 24, 1897, the court entered the following decree:

> The court finding from the evidence that the award made by the United States and Mexican Mixed Commission in respect to the claim of said company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other false and fraudulent practices on the part of said company and its agents; it is therefore hereby ordered, adjudged, and decreed that all claims in law and equity on the part of said company, its legal representatives and assigns, be forever barred and foreclosed of all claim to the money received from the Republic of Mexico for or on account of such award. (P. 852.)

The opinion of the court, delivered by Weldon, J., is to be found at page 804 of the record, and the opinion of the chief justice at page 843.

APPEAL.

An appeal to this court was applied for and allowed (p. 853), and the cause is now here for review.

QUESTIONS TO BE DISCUSSED IN THE FIRST INSTANCE.

On January 24, 1898, this court entered an order directing that when this cause is called for argument the following questions shall be discussed, in the first instance, namely:

(1) Whether the Court of Claims had jurisdiction of this case?

(2) Whether this court has jurisdiction of this appeal?

(3) Whether the appellate jurisdiction, if any, of this court extends to a review of the facts?

I.

DID THE COURT OF CLAIMS HAVE JURISDICTION?

In the absence of assignments of error in the record, we shall discuss this question with reference to the ten objections specified in the demurrer to the bill.

All of these objections profess to turn on the validity of the act of December 28, 1892, conferring jurisdiction on the Court of Claims, and yet, laying out of view the ninth one, which proceeds on the ground that the act was not approved by the President in accordance with the Constitution, and so relates to a matter somewhat extraneous to the act itself, none of the causes of demurrer assigned raises an issue which can be said to be

founded on any fair view of its language. Each misses its aim, applying to matters not at all involved in the statute.

The grounds of demurrer referred to, omitting the first one, which is sweeping and contains all the others, are briefly as follows:

That the questions, whether the award was obtained by fraud and whether the undistributed money paid thereon should be returned to Mexico, are not within the judicial power of the Constitution, but belong exclusively to the executive department, being diplomatic and political in character:

That the United States has no such interest in the matter of the bill as will support the suit:

That Mexico is the real party in interest and has forfeited all right to relief in equity by laches, and therefore that the United States has no right to demand relief for her:

That the award of the umpire is the final determination of a court of exclusive jurisdiction, which Congress has no power to reopen; that through the treaty-making power alone could the award be set aside or reopened; that that power, after considering the grounds for relief stated in the bill, refused to reopen the award, and consequently that the same is protected in every particular by the principle of *res judicata:*

That it appears on the face of the bill that the question of fraud therein presented was tried and de-

termined by the umpire and can not be reexamined and redetermined:

That the act under which the suit is brought undertakes to direct and bind the courts on which it confers jurisdiction to receive evidence and apply legal principles which are erroneous and contrary to the law as administered in the courts of the United States, and to prescribe to the courts the weight and effect to be given to the evidence and the method by which they shall reach the conclusion that the award was obtained, in whole or in part, by fraud:

That the bill does not present a case for relief.

In view of the efforts made in the court below, and to be repeated here, to wrench the language of the act of December 28, 1892, from its just sense, it is proper to aid the interpretation of that language by throwing upon it the light of the facts in which the act became a law. As was observed by Mr. Justice Bradley, in giving the opinion of the court in *Siemens* v. *Sellers* (123, U. S., 276, 285), the interpretation of the words of a law "is often to be sought from the surrounding circumstances and preceding history."

When the communities living around and near the spot in the State of Durango, Mexico, where the Abra Company had been engaged for about three years in quixotic efforts to wring prosperity from a cluster of exhausted mines, were startled by the news that here, in this capital city of Washington,

a grave tribunal had decided that this bankrupt company had been savagely driven from its mines and other property by the Mexican authorities, and had been awarded, by that tribunal, the round sum of $683,041.32, in Mexican gold, *as indemnity*, it is no wonder that the forgotten books and papers which the company left behind, as of no value, *when it abandoned* work in *its worthless mines*, should have come to light, to stagger the umpire who made the award and the Government that, through the imposture of its own citizens, urged the claim on which the award was based.

This evidence, and other after-discovered evidence of a testimonial character, which is in the record, made a profound impression. Secretary Bayard, speaking of it and of the after-discovered evidence bearing on the award by the same tribunal in favor of Benjamin Weil, in his communication to the President of February 28, 1888, uses the following language:

> It is a remarkable fact that whenever, since the distribution of the Mexican fund was commenced, the deliberate judgment of the official authorized by Congress to make such distribution has been recorded upon the two awards in question, it has uniformly been to the effect that the evidences that the United States, in presenting the claims, had been made the victim of fraudulent imposition were of such a character as to require investigation by a competent tribunal, possessing appropriate powers for that purpose. (Senate Ex. Doc. No. 109, Fiftieth Congress, first session, p. 6.)

Secretary Evarts, in a communication to the President dated August 8, 1879, marked "confidential,"

after having examined "the proofs, documents, and arguments" laid before him by the Mexican Government in both the Weil and Abra cases, reached the conclusion that "the honor of the United States does require that these two cases should be *further investigated* by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud." (Senate Report No. 1316, Forty-ninth Congress, first session, dated June 11, 1886.)

The Secretary was, furthermore, of opinion that such further investigation could not be made by the Executive, saying: "The Executive Government *is not furnished with the means of instituting and pursuing methods of investigation* which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation *must proceed from Congress.* I would advise, therefore, that the proofs and conclusions you shall come to thereon, if adverse to the immediate payment on these awards of the installments received from Mexico, be laid before Congress *for the exercise of their plenary authority in the matter.*" (*Ibid.*).

On August 13, 1879, President Hayes wrote at the foot of this communication: "The foregoing conclusions of the Secretary of State are approved." (*Ibid.*).

As a result, the new evidence was communicated to Congress by the President, with a decided expression of opinion that Congress should provide for the further investigation of these claims by *some domestic tribunal.* (*Ibid.*)

President Arthur, being similarly impressed by the new evidence, negotiated a treaty with Mexico on July 13, 1882, which, after reciting that the Weil and Abra cases "should each be opened and retried," proceeded to make provision for the rehearing of them by an arbitrator to be agreed upon between the Secretary of State and the representative of Mexico in Washington; but the treaty failed of ratification, and properly, it would seem, because, to state a single objection, it was hardly fitting that another government should have participation in the settlement of a question involving the honor and duty of the United States. It was the sounder view, and the one that prevailed, that such a question should be determined by a domestic forum.

Secretary Bayard, in his communication of February 28, 1888, reporting the rejection of the treaty to the President, says:

> It is fair to assume that the rejection by the Senate of the treaty signed by Mr. Frelinghuysen, for an international rehearing of the awards, *was in no sense an expression of opinion adverse to their investigation*, which Mr. Evarts had recommended. It is rather to be regarded as an approval of the opinion which he also expressed, *that the investigation should, under the circumstances, be made by this Government for itself, as a matter affecting solely its own honor.* (Senate Ex. Doc. No. 109, Fiftieth Congress, first session, p. 6.)

By a communication dated March 5, 1888, President Cleveland referred the matter to Congress, with the recommendation of Secretary Bayard that Congress "take action to provide expressly for the reference of the claims in question to the Court of Claims or such other court as may be deemed proper, in order that a competent investigation of the charges of fraud may be made." (Senate Report No. 1630, Fiftieth Congress, first session, pp. 76–84).

The Senate Committee on Foreign Relations, in a report recommending legislation on the subject, take occasion to say:

> The examination of these charges, made by successive Presidents, has led them practically to the same conclusion, and that being adverse to the integrity of the claim [La Abra], it is demanded by the honor of the United States that *its courts* should be required to pass upon its merits *with judicial care and solemnity.* (Senate Report No. 1454, Forty-ninth Congress, first session, pp. 4, 5.)

During the ten or twelve years that Congress had under consideration the request of the Executive to provide, by law, a proper method of investigation into the charges of fraud and perjury in procuring the two awards, the appellant, apparently dead to any sense of the serious reflection upon it involved in Mexico's charges, opposed every suggestion of legislation looking to an investigation with the pertinacity and resource which a corps of able counsel brought to its assistance.

In that remarkable effort to forestall investiga-

tion, *honor was apparently nothing* to the Abra Company, but the principle of *res judicata*, with its talismanic power of making *black* white, was then and *is now everything.*

The desperation of this struggle to baffle the Executive and Congress, in their efforts to get at the truth, is shown by the single circumstance that the *whole sum* of $240,683.06, distributed to the company under the award, *went for fees and expenses*, and "*not one cent*" *to the stockholders*, as Garth, a former treasurer and a stockholder of the company, swears. (p. 730.)

The counsel of La Abra Company, if they had had their way in this condition of things, would have placed their Government in an attitude of pitiable helplessness, leaving it no alternative to paying over the balance of the award to the company, *fraud or no fraud.* Indeed, so extreme was the course of counsel, that, when the treaty submitted to the Senate for the purpose of reopening the award was under the consideration of that body, the contention was set up that it transcended the authority of the treaty-making power to put at large again the questions adjudicated by the award, and thus destroy the so-styled vested right of the Abra Company in the award.

Since the rejection of the treaty, counsel have found it convenient *to take another tack*, namely, that the only outlet from the embarrassing situation of the

United States is to provide by a treaty with Mexico for a new trial of the issues involved in the award! *Anything to stifle investigation!*

It was this disparaging view of the just powers of our Government that evoked the following energetic reflections from the Mexican minister, Mr. Zamacona, in a communication to the Secretary of State, dated December 22, 1881:

> This legation can not for one moment suppose the political mechanism of a country, to which many others turn their eyes as to a model, to lack the means of frustrating a great fraud originated to the detriment of a friendly nation which is sparing no pains to fulfill its obligations toward the United States; nor can it believe that the only course remaining open to Mexico is to pay a heavy tribute to deceit and perjury, or that the Government of this Republic is prepared to serve as an instrument for the enforcement of so painful a sacrifice. (House Ex. Doc. No. 103, Forty-eighth Congress, first session, p. 640.)

The Government of Mexico, so far from making the after-discovered evidence a ground for impeaching the award, has punctually paid every dollar of it into the hands of the United States.

The Mexican minister, Mr. Mariscal, in a communication to the Secretary of State, dated December 8, 1876, expressly disclaims any intention "to put in doubt the final and conclusive character of the above-mentioned awards," meaning the Weil and Abra awards (Sen. Rep. No. 27, Forty-fifth Congress, second session, p. 30). Protestations of a similar character occur in the subsequent diplomatic correspondence between the two Governments

on the subject of these fraudulent awards. It is entirely clear, therefore, that the Government of Mexico has at no time sought to impeach the validity of the Abra award.

The award having been wholly paid and satisfied by Mexico, that is to say, having become *extinct*, before the act of 1892 was passed, it is equally clear that it could not have been the intention of Congress in that act to submit to the Court of Claims a moot case involving the validity of this *extinct award*, with a right of appeal to this court.

Every question as to the validity of the award having thus been removed from the arena of controversy, the embarrassment felt by the United States at the time the act of December 28, 1892, was passed was as to which of two alternative courses it should pursue with reference to the undistributed money in its hands, namely, whether it should pay the amount to the Abra Company, which demanded it *as a right*, or return it to the Government of Mexico, *which demanded nothing*, but threw itself unreservedly on the honor and magnanimity of the United States, having every reason to expect that the latter Government would act up to the friendly spirit of the treaty under which the award was made—that is to say, in a manner "to maintain and increase the friendly feelings between the United States and the Mexican Republic, and so to strengthen the system and principles of repub-

lican government on the American continent," to borrow the words with which the treaty begins.

Looking back to this controversy before the Executive and Congress, now, happily, passed into history, it is simply amazing that so much contention should have taken place as to the right and the duty of this Government to refuse to be the tool of its own citizens in carrying out a gigantic fraud against a friendly power; as if a government, imbecile and devoid of responsibility under such circumstances, would be worthy of a place in the family of nations.

Fortunately for the cause of administrative government, this court was enabled to take hold of the very question, in the cases of *Frelinghuysen* v. *Key* (110 U. S., 63), and *Boynton* v. *Blaine* (139 U. S., 306), and relieve it from the imaginary doubts and difficulties with which it had been obscured by the ingenuity of counsel.

These cases were both decided before the special act of 1892 was passed, and must have entered largely into it.

A strong effort was made, in the first case, to compel the Secretary of State, by mandamus, to pay over to appellant and its assigns what remained undistributed of the Abra award. In the second case, a similar effort was made by one of the parties claiming an interest in the undistributed money that had been paid on the Weil award.

The attempt in the earlier case, *Frelinghuysen* v. *Key*, was extreme, for it sought to subject the Secretary of State to judicial coercion, in the face of the pendency before the Senate of the above-mentioned treaty providing for opening both awards.

But this court refused to countenance the effort to subordinate executive discretion and national honor to the so-styled vested right of appellant in the award *and in the fraud.*

The court declared the underlying principle on which the controversy over the proceeds of the award must be determined when it said:

> The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair-dealing with the Government against which, through the United States, a claim has been made (pp. 75, 76).

This was the germ of the much-slandered act of December 28, 1892.

The argument of vested rights in the award is completely rejected by the court as an obstacle to the Executive's agreeing with Mexico to open the award, or taking any other course with reference thereto that the honor of the United States or its duty to Mexico might dictate.

The subsequent case of *Boynton* v. *Blaine* (139 U. S., 306) more than affirms *Frelinghuysen* v. *Key* (*supra*), holding that money paid the United States

by a foreign power, on a claim urged by the United States for a citizen, is practically the money of the United States, until paid over to the citizen, following the case of *Angarica* v. *Bayard* (127 U. S., 251).

Boynton v. *Blaine* was decided in March, 1891, and in less than two years was followed by the special act of 1892.

Coming now to the jurisdictional act itself, it begins with a preamble that recites in the very words of the Executive an existing necessity for legislation looking to a judicial investigation of the charges of fraud made by Mexico.

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the *case* of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that *said case* "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and
>
> Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that *said case* "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to *said claim* may be fully investigated."

It will be noted that, according to the preamble, it was the "*case*" and *not the claim or the award* of La Abra Silver Mining Company that called for investigation, the claim and the award being things

of the past, having been fully satisfied by Mexico, some years before.

The "case" referred to was the demand of the company for payment of the undistributed proceeds of the award which was being urged upon the Executive in the face of overwhelming evidence of fraud. It was, in other words, a "*case*" between the United States and *its own citizens*, purely *domestic* in character, and requiring investigation by a domestic tribunal, as any other controversy between the Government and a citizen.

The United States, as has been stated, having repelled the attempts to fasten a technical trust on the money in its hands in favor of the Abra company and its assignees, and having successfully vindicated its right to absolute control over that money, while in its hands, Congress, in its desire to relieve and ease the conscience of the Executive, could now, without danger of compromising the United States in any way, formulate an issue between the United States and those claiming the money, and direct the same to be tried and determined by some court, with power to render a final judgment.

Accordingly, Congress (section 1) directed the Attorney-General to bring "a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in the act

mentioned," for the purpose of determining the following issue:

> **Whether the award made as aforesaid in respect of the claim of the said defendant company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant company, or its agents, attorneys, or assigns.**

The act then proceeds to declare that, if such fraud is established, the company, its legal representatives or assigns, shall be barred and foreclosed as to all claim in law or equity "*to the money or any such part thereof* received from the Republic of Mexico *for or on account of such award*," and further declares, in a subsequent section (4) that, in such case, the President of the United States is "*authorized*," not directed, to return the undistributed money or any part thereof to the Government of Mexico.

The concluding section (5) declares that, during the pendency of the suit to be brought, "it shall not be lawful" for the Secretary of State, *not the President*, to make payments on the award; and further declares that, in case it should be adjudged that the award, "or any definable and severable part thereof," was not obtained by fraud, the Secretary of State, not the President, "*shall proceed to distribute* so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto." (See Appendix A for the act in full.)

The underlying principle of the act of 1892 is, that when this Government assumed to prosecute the Abra claim before the commission the claim passed under its absolute control, as much so as though it had been a public claim from the beginning, it not being agreeable to reason or law that the action of the Government, with reference to the matter, should be hampered in any way by the control or interference of the claimant. Upon no other theory can the issue, made up by the act between the United States, with the proceeds of the award in its own hands, and the claimant company and its assigns, be understood.

To enter upon the discussion of a proposition so well settled by judicial authority and by the practice of the Executive branch of the Government would be a waste of time. (*Frelinghuysen* v. *Key*, 110 U. S., 63; *Angarica* v. *Bayard*, 127 U. S., 251; *Boynton* v. *Blaine*, 139 U. S., 306; *The Great Western Insurance Company* v. *United States*, 19 C. Cls. R., 217; S. C., 112 U. S., 193; *Rustomjee* v. *The Queen*, L. R., 1 Q. B. D., 487; S. C., 2 Q. B. D., 69; *Burnand* v. *Radocanachi*, L. R., 5 C. P. D., 424; S. C., 6 Q. B. D. (C. A.), 633; S. C., 7 Appeal Cases (H. L.), 333; Wharton's Int. Law Dig., vol. 2, § 220, 2d ed.).

It is also clear that there was nothing in the provision of the treaty between the United States and Mexico making the decision on each claim sub-

mitted to the commission "absolutely final and conclusive" to prevent either Government from refusing to pay over to one of its citizens the proceeds of an award shown to have been the result of false and fraudulent practices on the part of such citizen. In the case of *Frelinghuysen* v. *Key* (*supra*), this court says, on this subject:

> The presentation by a citizen of a fraudulent claim or false testimony for reference to the commission was an imposition on his own government, and if that government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right but its duty, to repudiate the act and make reparation as far as possible for the consequences of its neglect if any there had been. International arbitration must always proceed on the highest principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the government from which they come, *and it is not to be presumed that any government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this.* They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the governments and into the hands of private parties. The language of the opinions must be construed in connection with this fact. The opinion of the Attorney-General in Gibbes's Case, 13 Op., 19, related to the authority of the executive officers to submit the claim of Gibbes to the second commission after it had been passed on by the first, without any new treaty between the governments to that effect; not to the power to make such a treaty (p. 73). (*Italic our own.*)

Again says the court, in that case, in a passage already quoted (*supra*):

> The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment,

entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair dealing with the government against which, through the United States, a claim has been made (pp. 75, 76). (*Italic our own.*)

It being clear now that the honor of the United States required that it should seriously investigate the charges of fraud in obtaining the award brought by Mexico, is there room for question that it was competent for Congress to confer jurisdiction on the Court of Claims to make such investigation?

It is true, that discussion had developed, at one time, some difference of opinion on the subject in Congress, but this was entirely due to the success with which the able and persistent counsel of the company had confused and darkened what they professed to enlighten.

At last, however, Congress saw through the sophistries and obstructive tactics of counsel, and passed the act of 1892 by the *overwhelming vote* of 43 to 5, in the Senate, and *without a division*, in the House.

Proceeding, as the act does, on the concession by Congress and the Executive of an ultimate duty on the part of the United States to turn over the money in hand to the claimant company and its assigns, in case no paramount duty to return it to Mexico should arise, from proof of her charges of fraud, the question left to the court to adjudge finally, namely, whether the company and its as-

signs should be "*barred and foreclosed of all claim to the money or any part thereof*" in consequence of such imputed fraud, would seem to be clearly within the judicial power of the Constitution, which entends "to controversies to which the United States shall be a party."

But it is better to give the views of the learned court below as to the character of the subject-matter submitted to its jurisdiction by the act:

> By the act of 1892 the United States recognizes the fact of the claim of the company to the unpaid portion of the award, and by that recognition establishes in the company the existence of a right, which becomes the subject-matter of judicial cognizance by the fact that it is recognized; and by the force of the statute it passes from a mere grace as against the sovereign to a right susceptible of justiciable determination.
>
> The recognition by the United States of the claim of the company has imparted to it the qualities of property which, as between the company and the United States for the purpose, not of determining a political question, but to ascertain a fact, is sufficient to support the judicial proceeding contemplated by the statute. Congress, by the act of 1892, declared a trust in the remaining funds for the purpose of determining the question of fraud urged by the Republic of Mexico, and conferred on this and the Supreme Court the judicial power of deciding that question. The statute provides, "to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein or as to any part thereof by fraud effectuated by means of false swearing or other false or fraudulent practices on the part of said La Abra Company." Congress having recognized the claim, there was by the force of that recognition a justiciable right which might be made the basis of judicial jurisdiction, as it is by the provisions of the act.
>
> The act of 1892 having recognized a claim on the part of the company, equitable in its character, and Mexico, in subordination to the judgment of the commission, having questioned the justice of the claim, the Government finds itself in the condition of a trustee, having in its possession money to which it lays no claim as property, files this bill in the form of a bill of inter-

pleader, or to quiet title, to have judicially determined its duty with reference to the money as property. The unpaid balance of the award by the act of 1892 belongs either to the company or the Republic of Mexico, and while Mexico is not a claimant, in the language of one of its communications to the State Department it is said, "not to prevent the awards made by the umpire in the now extinct Mixed Claims Commission, but only in the interest of rectitude and justice to render manifest the fraud committed by the parties interested." (*29 C. Cls., R., 432, 517, 518.*)

Undoubtedly, it was wise that Congress, in providing for the decision of the question of fraud, should also provide for the final decision of any right or equity in the fund claimed or that might be claimed by the company or its assignees, as against the United States, in order that the door should be closed to any possible future claim of the said parties against the United States, in case the court should find that the award was obtained by fraud.

It was the authority conferred upon the Court of Claims to render a judgment barring and foreclosing the Abra Company and its assignees as to all right in the proceeds of the award, or any severable part thereof, in case of proof of fraud in procuring the same or any such part thereof, on the one hand, and the distinct direction to the Secretary of State to pay over the fund to the parties entitled, in case the court should adjudge that the award, in whole or in part, was not procured by fraud, on the other hand, that brought the suit within the judicial power of the Constitution.

The statute avoids conferring jurisdiction on the court to decree as to the disposition of the undis-

tributed proceeds of the award, in case it should be found that no fraud or perjury was used in procuring it, but discreetly provides what shall be the duty of the Secretary of State in that event, thus avoiding the necessity of such a decree, but at the same time laying the Secretary under a duty as imperative as a decree.

Whatever the rights of appellant in the undistributed proceeds of the award may be, this court, as we have seen, has twice decided that those rights *are subordinate to the right of the United States* to retain such proceeds until it shall be satisfied that to pay the same to appellant and its assigns would not be to aid them in the consummation of a fraud against the Government of Mexico.

Looking at the act of 1892 in the light of its history, as already shown by documentary evidence, the specifications of demurrer, except the one relating to the approval of the act, *which should have been a plea*, seem to have no relevancy to the case made in the bill. They are all wide of the mark.

How is it possible, looking at the real case before the court, to see in the action of Congress an invasion of the treaty-making power in the mere fact of clothing the Court of Claims with jurisdiction to decide a question which has arisen between the United States and *certain of its own citizens*, and which *deeply involves the honor* of the Government?

If those citizens imposed a fraudulent claim on

their Government for the purpose of being prosecuted against Mexico, and, by means of perjured testimony, enabled their Government to procure an award for the same, which Mexico has fully satisfied to it, this court has solemnly decided that that Government is in honor bound to withhold the money so paid from the contrivers and perpetrators of the crime and to return the same to the hands from which it was received; at least, such we understand to be the effect of the language above quoted from the opinion of the court in *Frelinghuysen* v. *Key*.

It is idle, therefore, to say, in the face of that language, that the despotic principle of *res judicata* or any other principle of municipal law "stands in the way of the national power *to do what is right under all the circumstances*."

BUT, IF IT SHOULD APPEAR TO THE COURT THAT THE ACT OF 1892 INVADES THE DOMAIN OF THE EXECUTIVE OR JUDICIAL DEPARTMENT, AS CONTENDED, THE ACT IS NOT WHOLLY INVALIDATED THEREBY.

When it is considered that the primary object of the statute was to respond to the repeated requests of the Executive for legislation that would afford the means for instituting a thorough investigation into the charges of fraud made by Mexico, it would be a most unfortunate result if this court should hold the entire act unconstitutional and void because

Congress, after providing for a judicial examination into the facts by the Court of Claims, went a step further, and provided for certain subsidiary matters, which, it is alleged, were beyond its constitutional authority.

We think that the hopes of this country and Mexico are not to be disappointed by such an outcome of the energy that has been expended in the effort to overcome the obstructive opposition of the Abra Company and reach the settlement of a matter which has vexed the relations between the United States and Mexico for many years.

This court has repeatedly held that the good parts of a statute, void in one or more particulars, should be allowed to have effect where they are not inextricably involved with the bad. The touchstone for the resolution of such questions is given in *Louisiana* v. *Allen* (103 U. S., 80, 84), where it is said:

> The point to be determined in all such cases is whether the unconstitutional provisions are *so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature.*

We know of no better way of getting at the legislative intent in passing the act of 1892 than by looking into its preamble, which is "*a key to open the understanding of the statute*," and which, for convenience, is now quoted for a second time in this brief:

> Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case

of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated."

We submit that this preamble leaves no room for doubt that the great purpose of the act was to secure an investigation of the question of fraud by the Court of Claims, in the spirit in which it had been asked for by the President and Secretary of State; and that the further purposes of the act are plainly severable from that leading one, which can easily stand by itself although the rest should fall.

The subsidiary purposes of the act are, (1) to authorize the Court of Claims, in case fraud should be found, to enter a decree debarring and foreclosing appellant and its assigns from participation in the money in hand; (2) to authorize the Court of Claims to deal with the case in all respects as a court of equity; (3) to *authorize* the President, in case fraud is found, to return to Mexico the whole or a part of the money, as the case may be; and (4) to prohibit the Secretary of State from making further payments out of the fund during the pendency of

this suit, and in case fraud is disproved to distribute the whole or a part of the fund, as the case may be, to the persons entitled.

That all these purposes may fail without defeating the main purpose of the act would seem clear—indeed, too clear for serious argument.

The principal cases in this court on the subject, in addition to that above cited, are *Reagan* v. *Farmers' Loan and Trust Co.* (154 U. S., 362, 395, 396); *Field* v. *Clark* (143 U. S., 649, 695, 696); *Baldwin* v. *Franks* (120 U. S., 679); *Huntington* v. *Worthen* (ib., 97); *The Virginia Coupon Cases* (114 U. S., 270, 304, 305); *Trade-mark Cases* (100 U. S., 82).

THE ACT OF DECEMBER 28, 1892, WAS APPROVED IN A CONSTITUTIONAL WAY.

The constitutionality of this act is impeached on the ground that, at the time of its approval by the President, Congress had adjourned for the usual Christmas recess.

The facts on which the objection is based are as follows: The bill originated in the Senate and passed the House of Representatives on December 14, 1892. On December 15 it was signed by the Speaker and the President of the Senate. On December 20 the bill was laid before the President. As say the Court of Claims, "the ten days (Sundays excepted) within which he might sign or return it to Congress, therefore, expired on the 31st of December."

While the bill was in the President's hands Congress adjourned for the holidays. The joint resolution of adjournment is as follows:

> *Resolved by the House of Representatives (the Senate concurring)*, That when the two Houses adjourn on Thursday, December twenty-second, they will stand adjourned until Wednesday, January fourth, eighteen hundred and ninety-three. (Cong. Rec., Vol. 24, 52 Cong., 2 sess.)

On December 28, 1892, the President signed the bill, neither of the Houses of Congress being in session.

The question raised on this state of facts is not whether a bill presented to the President during the session of the Congress that passed it and approved by him within ten days after such presentation but after such Congress had dissolved its organization by an adjournment *sine die* became a law, but whether a bill presented to the President during the session of the Congress that passed it and approved by him within ten days after such presentation but during a recess of such session and while the organization of Congress still existed became a law.

A majority of the Court of Claims seems to have considered both of these questions as substantially one and the same. The Chief Justice, however, took a different view, regarding them as essentially different. He concurred in the judgment, on the ground that the approval of a bill by the President in a recess of the session of the Congress that passed it was valid under the Constitution, but

expressly declined to acquiesce in the proposition laid down by the majority, that the adjournment of a session of Congress has no effect on the power of the President to approve bills passed at such session and duly presented to him.

It will be found, we think, that this view simplifies the case and divests it of difficulty.

The Constitution (Art. 1, sec. 7) provides as follows:

> Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. * * * If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, IN WHICH CASE IT SHALL NOT BE A LAW.

The bill, in this case, was duly presented to the President on December 20, 1892, two days before the adjournment of Congress for the recess.

It was approved December 28, 1892, eight days after presentation; but this, it is said, had no legal effect and was no official act, because at the time the President set his hand to the bill the Congress was taking a recess.

If this position is sound, it follows that Congress cannot adjourn for a day, out of respect to a deceased Member, we will suppose, without rendering nugatory bills awaiting action in the President's

hands, where the last day on which he might act falls within the period covered by the adjournment.

The fallacy at the bottom of this position seems to lie in confounding the *session* of Congress with its *actual sitting;* in other words, in confounding an adjournment *that puts an end to Congress as an organized body,* and an adjournment that merely suspends its actual sitting, *leaving its organization intact.* In the former case, the return of a bill by the President, with his objections, would be vain for the want of a Congress to receive and act on them, while in the latter it would not be.

The Constitution furnishes an instructive analogy in the provision that in case the President disapproves of a bill he shall return it to the House where it originated. Has anyone ever contended that such return, when made on the last day of the ten-day limit, is rendered inoperative and the bill stricken with nullity if the particular House happened not to be actually sitting when such return was made? Manifestly the Constitution did not contemplate that such House should be able, by design or accident, to frustrate the President's action in this way by adjournment, and we may reasonably conclude that if the framers of the instrument had so intended they would have provided for the case by declaring that if the return of a bill by the President should be prevented by the adjournment of the House in which it originated such

bill "shall not be a law." The fact that they did not so declare must be taken as showing that no such provision was necessary, for the reason that neither House could, by its independent action, terminate a session of Congress, and so prevent the President's return of a bill.

By a parity of reasoning, why should the failure of Congress to be actually sitting on the last, or other day, or days of the ten-day limit, have any effect on the power of the President to approve or disapprove of a bill? provided such failure to sit was not the result of an adjournment which dissolved the organization of the body. In such a case, it can not be said that Congress has *prevented the return of any bill in the President's hands by adjournment*—in other words, that the President can not state objections because there is no public body in existence to which they can be submitted.

Following now the well-known rule of construction, that where a constitution or a statute admits of two meanings, one of which is productive of public inconvenience and the other not, the latter should be adopted, it would seem proper to conclude that the adjournment of Congress spoken of in the Constitution as preventing the President's return of a bill within the ten-day limit is an adjournment that puts an end to a session of Congress, and not to one which merely suspends the actual sitting of a Congress that continues to exist.

In 1864 the supreme court of New Hampshire had before it the identical question now presented, upon a case submitted for opinion by the legislature. The constitution of the State is the same as that of the United States, in the particulars under consideration, except that it limits the executive to five days in which to return a bill instead of ten, as in the latter.

The bill in question in that case, originating in the House of Representatives had been presented to the governor on Wednesday, August 17. The 21st of August falling upon Sunday, it resulted that the governor had the whole of Monday, August 22, upon which to return the bill, the day of presentation being *included*, the court held, in the computation. But the House of Representatives was not in session on that day, because on the preceding Saturday, August 20, both houses adjourned to Tuesday, August 23. The governor returned the bill with his objections on Wednesday, August 24. The court held, in an able opinion, that the governor had retained the bill one day beyond the constitutional limit of five days, and consequently that it had become a law. The following extract from the opinion fully supports the government's contention here, that the act of December 28, 1892, is a constitutional law:

> **The adjournment referred to in this provision of the constitution is not, we think, the ordinary recess or adjournment from time to time during the continuance of the session, but**

the final adjournment at the close of the session. In fact, this is the only adjournment, we think, which could prevent a return of the bill within the time limited. If we are right in the views expressed upon the first point, viz, that it might be sufficient for the governor to return the bill, etc., to the speaker after the adjournment of the house for that day, if within the five days, then it follows, of course, that the house could not prevent the return of a bill by adjourning over any one of the five days, even though it should be the last one of the five, because the bill might in that case be returned, within the time limited, to the speaker, or to the clerk, or some other proper officer. But when a final adjournment of the legislature for the session occurs before the expiration of the five days, then the bill can not be returned, nor could the two houses act upon it if it could be then returned. In the case before us, it is clear, we think, that the return was not prevented by the adjournment in question any more than it might have been by the adjournment from day to day. (45 N. H., 610.)

An analogous point was decided in the case of *Harpending* v. *Haight* (39 Cal., 189), which arose under the constitution of California, which, as to the point under discussion, is substantially the same as the Federal Constitution. In that case the bill was presented to the governor on Saturday, March 19, 1870, and on the tenth secular day thereafter, namely, on March 31, at 4 p. m., the governor, intending to return the bill, with his objections, to the senate, where it originated, delivered the same to his messenger for that purpose. The messenger, on arriving at the senate chamber, found that the body had adjourned. He did not leave either of the documents with any officer of the Senate, but at once returned with them to the governor.

On April 1, he communicated these facts to the Senate in a special message, and informed that body

that the bill had consequently failed to become a law.

Accordingly a mandamus was applied for to compel the governor to cause the bill to be authenticated as provided for by section 2 of an act entitled "An act for the authentication of statutes without the approval of the governor."

The court, being of opinion that the senate, by adjourning on March 31, had not prevented the governor from returning the bill in question, with his objections, and consequently that the bill had become a law by the failure of the governor to return it with his objections within the limit of ten days, awarded the mandamus as prayed.

In discussing the adjournment of the senate in its relation to the governor's action the court say:

> Now, if the mere fact of the recess of the senate, thus constitutionally taken, does operate to defeat, in a measure, the exercise of the veto power conferred on the executive by the constitution, then we have the strange spectacle of an irreconcilable conflict between the several clauses of that instrument itself, by which the senate, by the mere exercise of its own admitted constitutional authority to adjourn, violates the equally clear constitutional right of the executive to have it kept in session.
>
> We are of opinion that the adjournment of the senate on March 31 did not curtail the veto power of the executive over the bill in question, nor should it even have embarrassed him in its exercise. The return should have been made in such manner as the circumstances would permit; it should, at all events, have left the bill and message beyond the executive control, and, if need be, in the immediate custody of some proper person, who would be likely to deliver it to the Senate at the first opportunity. The best return that the circumstances would admit would, in our judgment, be a proper return. The maxim *lex non cogit ad impossibilia* would be applicable to such a condition of affairs. We know of no other rule, either, upon which

the clear right of the governor to make the return to the senate can be reconciled with the equally clear right of the senate to be in recess at the time.

In considering the meaning of the term "adjournment," as used in the provision of the State constitution which declares that a bill not returned within the ten-day limit shall become a law "unless the legislature, *by adjournment*, prevent such return," the court say:

> Having reached the conclusion that the facts do not show that the governor returned the bill to the senate within the meaning of the constitution, we proceed to inquire whether "the *legislature, by adjournment*," prevented such return; for, if it did, the bill could not become a law by reason of the failure of the governor to return it within the ten days. We judicially know, and, if we did not, we are distinctly informed by the agreed statement of facts, that the late session commenced on Monday, the 6th day of December, 1869, and terminated on the 4th day of April, 1870. The adjournment of the 4th day of April was, in our opinion, the only adjournment which could have prevented the executive from making the required return within the prescribed time.
>
> This results necessarily from the views we have expressed on the other proposition, in which we hold that the executive may return a bill to the senate, though it be not, at the moment of the return, in actual session. If it has adjourned for the day, or for three days, it still has an organized existence as a legislative body, with its president, secretary and other officers, to whom, under such circumstances, a substitutional delivery of the bill and message might be made, and whose official duty it would be to place the bill and message before the senate at as early a time as might be thereafter. Such a return, as we have said, would be the only one permitted by the circumstances, and when the bill should afterward actually reach the senate, it could then proceed to reconsider it, as required by the constitution in that respect.
>
> But when a final adjournment of the legislature has occurred, there is an end to the organized existence of the senate. It has no longer officers to represent it for any purpose; nor could the bill, in the nature of things, ever be brought to its attention, for it would not be in session thereafter, nor be reconsidered by it, which is the purpose to be attained, for it would be itself no longer existing.

As either House of Congress can perform its legislative functions while the other is in recess, so there is no apparent reason why the Executive should not perform its functions with reference to legislation while both Houses of Congress are in recess. If not, then it results that, if at the time the Executive approves a bill the Houses of Congress are not actually sitting, the act of the Executive is a nullity, which looks like an absurdity.

But it is urged that the President is a part of the legislative power and that "this power is a *unit*, though distributed;" that "the parts can only act in unison;" that "whenever a part ceases to act, the whole becomes inoperative;" that the Executive act owes its validity to the existence of the legislative body," and that "upon the adjournment of that body the power ceases, and all acts of a legislative nature are void." These positions are supported by the cases of *Fowler* v. *Pierce* (2 Cal., 165), and *Hardee* v. *Gibbs* (50 Miss., 802), and are supposed to be authority for the contention that the approval of the act in controversy here is without constitutional sanction.

An examination of the cases cited, however, shows that they refer entirely to the performance by the executive of the act of approval after the *final* adjournment of the legislature, and have no application to a case like the present. Indeed, those cases are

indirect authority for the position here taken by the Government.

As the approval of the bill in this case was during a recess of Congress, and while the body was in session, it is unnecessary to notice the doctrine laid down in those cases, that the Executive is a branch of the legislative power.

The view above presented is confirmed by the long practice of the Federal Executive, during which many public and private bills have become laws, in the same way as the act now in question, by approval during the holiday recess of Congress. We give, in Appendix B, a list of these acts, reaching as far back as the recess of 1862, and embracing important legislation. Thus, to select some instances from the list, the act "for the admission of the State of West Virginia into the Union, and for other purposes," was approved December 31, 1862 (12 Stat., 633), during a recess extending from December 23, 1862, to January 5, 1863 (Cong. Globe, Thirty-seventh Congress, third session, pt. 1, p. 64); the act making appropriations for extraordinary expenses of the naval service (18 Stat., 1), amounting in all to $4,000,000, was approved on December 31, 1873, during a recess extending from December 19, 1873, to January 4, 1874 (Cong. Rec., Forty-third Congress, first session, pt. 1, p. 352); the act extending the duration of the court of commissioners of Alabama claims (19 Stat., 1) was approved on December 24, 1875, dur-

ing a recess extending from December 20, 1875, to January 5, 1876 (Cong. Rec., Forty-fourth Congress, first session, pt. 1, p. 250), and the joint resolution making an appropriation for the purpose of paying the necessary expenses incurred in investigating the origin and cause of epidemic diseases in the United States (20 Stat., 487) was approved on December 21, 1878, during a recess extending from December 20, 1878, to January 7, 1879 (Cong. Rec., Forty-fifth Congress, third session, pt 1, p. 340).

This practical construction of the Constitution by the Executive Department, as to a matter within its province, will, we presume, be considered conclusive, according to an established rule repeatedly recognized by this court (*The Laura*, 114 U. S., 411 and cases there cited), and strongly emphasized by the supreme court of Georgia in *Solomon* v. *Commissioners* (41 Ga., 157).

Added to this is the distinct recognition by Congress of the validity of the act of December 28, 1892, in the following provision, to be found in two general deficiency acts (29 Stat., 296, ch. 673, and Pamphlet Laws of second session, Fifty-fifth Congress, ch. 571, p. 679):

> Suits against Benjamin Weil and La Abra Mining Company: For fees and expenses in suits of the United States against Benjamin Weil and others, and the same against La Abra Silver Mining Company and others, the said suits having been brought in obedience to the two acts of Congress, approved, respectively, on December twenty-eighth, eighteen hundred and ninety-two, and entitled "An act to amend and enlarge the act approved

June eighteenth, eighteen hundred and seventy-eight, entitled 'An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight,'" ten thousand dollars.

We repeat that we do not deem it necessary to follow the court below in its able and instructive discussion of the question whether the President has power, under the Constitution, to approve a bill after the termination, by adjournment, of the session of Congress at which it was passed.*

There is a contrariety of opinion on the subject, but the weight of the argument appears to be on the side of the power. Indeed, the reasoning of this court in passing on the constitution of Illinois in *The Town of Seven Hickory* v. *Ellery* (103 U. S., 423) seems to necessitate the conclusion that, under the Constitution of the United States, the President may approve a bill after the final adjournment of Congress, provided he does so within ten days after its presentation to him.

In the leading case of *The People* v. *Bowen* (21 N. Y., 517) the power was sustained, with great force of reasoning, in a controversy arising under the constitution of New York, which, in the particular under discussion, is identical with the Federal Con-

*NOTE.—The opinion containing this discussion was delivered by Judge Nott, and evoked strong expressions of assent from the late Mr. Justice Strong, then in retirement, and from the late Judge Thomas M. Cooley. (See their letters, 29 Ct. Clms., pp. 537 and 546.)

stitution. This case, together with the cases of *State* v. *Fagan* (*infra*) and *Solomon* v. *Commissioners* (*supra*), is affirmed by this court in *Seven Hickory* v. *Ellery* (*supra*).

In *Lankford et al.* v. *County Commissioners* (73 Md., 105) the court of appeals of Maryland vindicated the power under the constitution of that State, which is, in this respect, substantially the same as the Federal Constitution. In his opinion, Chief Justice Alvey, speaking for the court, places much reliance on the reasoning of this court in *The Town of Seven Hickory* v. *Ellery* (*supra*). He also satisfactorily accounts for the practice of the Federal Executive to approve bills before the termination of the session of Congress at which they were passed, by showing that it has its source in certain joint rules of the two Houses, and not in the Constitution of the United States (p. 115). It is unnecessary to add that these joint rules can not restrict the constitutional authority of the President.

Reference is also made to *State* v. *Fagan* (22 La. An., 545), and *City of Detroit* v. *Chapin* (108 Mich., 136).

We must not omit to allude to the precedent established by President Lincoln, in 1863, by approving the captured and abandoned property act after the dissolution, by adjournment, of the session at which it was passed—every detail and argument

relating to which is presented in the learned opinion of the court below.

It is true that the House Judiciary Committee was directed to investigate the manner of the approval, and reported against its constitutionality; but the fact remains that the House failed to follow up the report of its committee, and that this court never declined jurisdiction under the act in the many cases that from time to time came before it, as it might have been its duty to do, *suâ sponte*, if the act had no legal existence. This court never moves until it feels a firm jurisdiction under its feet, nor does it wait for the bar to point out the absence of jurisdiction in a particular case.

All this is very strong to show that the deliberate judgment of the other two departments of the Government has been on the side of the Executive in this matter.

IT IS NOT MAINTAINABLE THAT CONGRESS CAN NOT DEVOLVE ON THE COURT OF CLAIMS, WITH ITS CONSENT, ANY FUNCTION NOT COVERED BY THE JUDICIAL POWER OF THE CONSTITUTION.

The undersigned, in his brief *In re Sanborn* (148 U. S., 222), argued as follows in support of this proposition:

> It is too late now to question the power of Congress to refer cases or authorize them to be referred to the Court of Claims to be dealt with outside of the judicial power. In such instances

the court is named merely as a way of designating its members as the particular officers or persons who are called on to assist Congress or one of its branches, or, it may be, some committee of either House.

The action of Congress in this respect has been so often taken, that, as the Chief Justice seems to intimate in *The United States* v. *Ferreira* (13 How., 52), it is too late now to question the power to take it.

In *The United States* v. *Anderson* (9 Wall., 56, 72), this court refused to hold that Congress intended to make the Court of Claims "a mere commission" for cases arising under the captured and abandoned property act, "*in the absence of an express declaration to that effect.*" This case was decided in 1869, and, consequently, after the Court of Claims was made the depository of part of the judicial power under the Constitution, by the act of March 17, 1866. (14 Stat., 9.)

The Supreme Court does not intimate, in the case cited, that it would have been beyond the competency of Congress to make the Court of Claims a commission to investigate and report upon claims under the captured and abandoned property acts. As in that case, so in all cases of legislation with reference to the jurisdiction of the Court of Claims, the question is whether Congress intended the court to act under the judicial power or not.

It is, furthermore, almost admitted by the court in the case of *The United States* v. *Ferreira* (*supra*) that the court or judge, the character of whose action was there in question, validly performed a nonjudicial function, and *Hayburn's Case* (2 Dall., 409) is cited in support of that view.

It is unnecessary to inquire whether nonjudicial functions can be *forced* upon the Court of Claims, as the judges of that court raised no objection whatever to investigating and reporting upon Mr. Sanborn's claim.

In denying the right of appeal in that case the court use the following language: "We regard the function of the Court of Claims, in such a case, as *ancillary and advisory only*" (p. 226, *italic our own*).

In *Gordon* v. *United States* (117 U. S., 697), Chief Justice Taney, in his "last judicial utterance," fully

sanctions the position for which we are now contending. He says:

> It will be seen by the sections above quoted that the claimant whose claim has been allowed by the Court of Claims, or upon appeal by the Supreme Court, is to be paid out of any general appropriation made by law for the payment and satisfaction of private claims: but no payment of any such claim is to be made until the claim allowed has been estimated for by the Secretary of the Treasury, and Congress, upon such estimate, shall make an appropriation for its payment. Neither the Court of Claims nor the Supreme Court can do anything more than certify their opinion to the Secretary of the Treasury, and it depends upon him, in the first place, to decide whether he will include it in his estimates of private claims, and if he should decide in favor of the claimant, it will then rest with Congress to determine whether they will or will not make an appropriation for its payment. Neither court can by any process enforce its judgment; and whether it is paid or not, does not depend on the decision of either court, but upon the future action of the Secretary of the Treasury, and of Congress.
>
> *So far as the Court of Claims is concerned we see no objection to the provisions of this law. Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim for money against the United States*, subject to the supervision and control of Congress, or a head of any of the Executive Departments. *In this respect the authority of the Court of Claims is like to that of an auditor or comptroller*—with this difference only; that in the latter case the appropriation is made in advance, upon estimates, furnished by the different Executive Departments, of their probable expenses during the ensuing year; and the validity of the claim is decided by the officer appointed by law for that purpose, and the money paid out of the appropriation afterwards made. In the case before us the validity of the claim is to be first decided, and the appropriation made afterwards. *But in principle there is no difference between these two special jurisdictions created by acts of Congress for special purposes, and neither of them possesses judicial power in the sense in which those words are used in the Constitution. The circumstance that one is called a court and its decisions called judgments can not alter its character nor enlarge its power.*

II.

IF THE FUNCTION DEVOLVED ON THE COURT OF CLAIMS BY THE ACT OF 1892 WAS NOT WITHIN THE JUDICIAL POWER, IT FOLLOWS THAT THIS APPEAL MUST FAIL ON THAT GROUND ALONE.

In support of this proposition it is only necessary to refer to the cases of *Gordon* v. *United States* and *In re Sanborn* (*supra*), which lay down that this court will not review a case that does not fall within the judicial power of the Constitution.

III.

UNDER THE ACT OF DECEMBER 28, 1892, THERE IS NO APPEAL TO THIS COURT ON THE FACTS.

It seems to be a misconception that the act under which this suit was brought casts upon this court, on appeal, the onerous duty of investigating *de novo* the mass of conflicting evidence in the record for the purpose of determining the mere question of fact whether the award made by the Joint Commission was procured by the appellant, its agents, attorneys, or assigns, by "fraud effectuated by means of false swearing or other false and fraudulent practices."

We shall attempt to show that Congress did not intend anything so unreasonable and so obstructive to the other business of this court, having provided for a trial of the facts by the high court to whose findings of fact, under its general jurisdiction, the

United States submits *as final, no matter how important the subject in controversy may be.*

The act of December 28, 1892 (see Appendix A), authorizes and directs (sec. 1) the Attorney-General—

> to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

The act then proceeds (sec. 2) to confer jurisdiction on the Court of Claims, as follows:

> That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

Section 3 is the provision under which this appeal was taken, and is as follows:

> That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party *within ninety days* from the rendition of such final decree, *under the rules of practice which govern appeals from said court;* and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

To contend that the appeal provided for in the section just quoted entitles appellants to a hearing *de novo* on the facts, as in equity causes generally, is to ignore and strike from the section its requirement that the appeal provided for shall be taken "*under the rules of practice which govern appeals from said Court* [*of Claims*]."

The rules here referred to are those prescribed by this court, under the authority of the act of March 3, 1863 (sec. 708, R. S.), which provides that appeals may be taken from the Court of Claims, *under such regulations as this court may direct.*

In the first rule regulating the subject, this court directs as follows:

> In all cases hereafter decided in the Court of Claims in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court *upon the following record, and none other:*
>
> 1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.
>
> 2. *A finding by the Court of Claims of the facts in the case established by the evidence in the nature of a special verdict, but not the evidence establishing them;* and a separate statement of the conclusions of law upon said facts, upon which the court found its judgment or decree. *The finding of facts and conclusions of law to be certified to this court as a part of the record.*

If now the words of the statute are to have effect, how can there be a hearing *de novo* on the facts? How can there be *any hearing at all* on the merits in the absence of a finding of facts in the nature of a special verdict? The rule is peremptory that appeals shall be heard on records as prescribed by it,

and "NONE OTHER," and the statute, by adopting the rule, has withdrawn from this court all control over it, so far as this case is concerned.

If Congress had intended that this court should be involved in a tedious investigation of the confused, conflicting, and voluminous evidence in this case, it would seem impossible to believe that the act would have provided that an appeal in the case should be subject to the rules of practice governing appeals from the Court of Claims.

When we consider that the questions of fact involved in this case had been before Congress for over ten years, perplexing that body and consuming a vast amount of time, it is hardly probable that Congress was so indifferent to the public interests as to require this court to review on the facts the final decision the Court of Claims was to render in the case.

What such a review means is indicated in the opinion below on the merits, where the court speaks of the impossibility of dealing "in detail with the testimony" and of its extraordinary volume. The brief in support of the motion in this case at the last term, "that the objections to the jurisdictional act be first heard and determined," also foreshadows the severity of the labor involved in a hearing on the facts where it says that "much time and attention will be required for a proper discussion and

consideration of the questions of fact and law involved in the case," and that a hearing on the merits will be "*long and laborious.*"

It is conceded that there is no finding of facts by the court below, nor is it pretended that appellant asked for any such finding, so that there has been an entire failure on the part of appellant to observe the requirements of this court in rules 4 and 5, regulating appeals from the Court of Claims, which are as follows:

RULE 4.

> In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall *make and file their finding* of facts, and their conclusions of law therein, in open court, *before or at the time they enter their judgment in the case.*

RULE 5.

> In every such case, each party, at such time *before trial* and in such form as the court may prescribe, shall submit to it *a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the finding of facts.*

Outside of the questions of law arising upon the act of 1892, under which this suit was brought, *nothing remains* for determination but the statutory issue:

> Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns. * * *

This case bears no resemblance to the case of

Harvey v. *United States* (105 U. S., 671), where this court held that the special act of Congress under which the suit was brought conferred equity jurisdiction on the Court of Claims, and that, on appeal, this court must determine the facts as well as the law applicable thereto.

In that case, it will be observed, the special act in conferring jurisdiction on the Court of Claims to proceed "*as a court of equity jurisdiction*," and, if need be, to reform the contracts in question, and render the proper relief, did not use any language indicating that an appeal in the case to this court should be conducted on rules of procedure different from those applicable to cases in equity generally. (See the act, 19 Stat., 490, c. 279.) And the same may be said of the case of *United States* v. *Old Settlers* (148 U. S., 427, 464), where this court reviewed the facts on appeal. Congress in that case gave the Court of Claims "*unrestricted latitude*" in determining the matters submitted to its jurisdiction, and this court reached the conclusion that it was intended that its jurisdiction on appeal should extend to an examination of the entire case, *de novo*.

But the difference between those cases and the one at bar consists in the absence from the former of anything in the respective jurisdictional acts to show a purpose to put restrictions on the appellate power of this court, sitting as a court of equity. The inference drawn in the cases of Harvey and

The Old Settlers, as to the scope of this court's appellate jurisdiction, is made impossible in the case at bar by the statutory command that the appeal allowed to either party shall be "*under the rules of practice which govern appeals from said Court* [*of Claims*]."

Never did a piece of legislation receive closer scrutiny or more anxious consideration than the act conferring jurisdiction in this case. Every word of it was pondered, and therefore should have its *full effect*, or, as Dodderidge, J., once said, expressing the same idea, "*Every string ought to give its sound.*"

The assumption that this is a suit in equity, in the technical sense, seems gratuitous. The act does not so denominate it. The Attorney-General is merely "authorized and directed to bring *a suit or suits* in the name of the United States."

It is true that fraud is cognizable in equity, but it is also cognizable at law; there being a concurrence of jurisdiction on the subject between courts of law and of equity. Nor was there any reason, growing merely out of the complicated inquiry involved, for investing the Court of Claims with jurisdiction in equity, because the methods of investigation used in that court are *precisely the same as those employed in courts of equity.*

It is true that the act (sec. 2) authorizes the Court of Claims to make "all interlocutory and final decrees" "according to the principles of equity and

justice," and "to enforce the same by injunction or any proper final process," and "in all respects to proceed in said cause *according to law and the rules of said court*, so far as the same are applicable."

Nor is it overlooked that section 5 contains the following provision:

> And in case it shall be finally adjudged in said cause either in the Court of Claims *or in the Supreme Court of the United States* that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, *was not obtained through fraud as aforesaid*, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

But this does not necessitate the inference that the adjudication by this court referred to should involve an investigation into the evidence, for it is plain that questions of law might arise on findings of the Court of Claims, such as how far the appellant, as a body corporate, was to be affected by the frauds of its officers and agents, the determination of which would be an adjudication that appellant had or had not used fraud in obtaining the award in question.

There is clearly nothing in this language of section 5 that would warrant the court in refusing to give effect to the requirement of section 3 that an appeal taken under that section must be "under the rules of practice which govern appeals from said Court [of Claims]."

In framing section 3 Congress was exclusively occupied with the subject of appeals, and nothing said in other sections, as to other matters, should be construed to overrule, by implication, the express words of the third section.

But when it is considered that Congress was dealing with an almost unprecedented case, which had baffled the executive and legislative departments of the Government, and was finally to be subjected to the judicial power of the Constitution, it seems clear that Congress did not have its attention fixed on any particular description of courts known to our judicature, but intended to create a jurisdiction *sui generis* and fitted to the extraordinary case before it, regardless of the ordinary landmarks of jurisdiction.

If Congress had proposed to make the Court of Claims a court of equity for the purposes of this case it would have so declared, as it did in the special act involved in the case of *Harvey* v. *United States* (*supra*). Nothing relating to jurisdiction would have been left to implication in a piece of legislation so intimately connected with the relations between the United States and a friendly power, and which, as a proposal, was violently assailed because, as alleged, it would, if it became a law, trench on the province of the Executive, violate international law, and trample under foot the principle of *res judicata*.

We submit, therefore, that this court has no jurisdiction to look into the facts on this appeal.

ARGUMENT ON THE FACTS.

Supposing now the act of 1892 to be sustained and the court to be of opinion that this appeal extends to the facts as well as the law, we proceed to discuss, in the light of the evidence, the great issue of fact formulated by the statute, namely: Whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company or its agents, attorneys, or assigns.

As appears by the aforegoing discussion, this suit is the outgrowth of a claim filed by the United States in the name of La Abra Silver Mining Company, a corporation of the State of New York, against the Republic of Mexico before the joint commission that sat under the treaty of July 4, 1868, between the United States and that Republic, having for its object the ascertainment and adjustment of claims of the citizens of each country against the Government of the other.

The Abra Silver Mining Company, as stated in its certificate of incorporation, was "formed for the

purpose of carrying on a part of its business in places out of the State of New York, which places are Tayoltita, in the State of Durango, and also the mineral district of San Dimas, both in Mexico; and the name of the town and county in the State of New York in which the principal part of the business of said company within said State is to be transacted is the city and county of New York." (P. 24.)

This company claimed the enormous sum of $3,000,030 for damages sustained, as alleged, by the hostile action of the Mexican authorities in expelling it from the country and forcibly appropriating its property.

The moralist and poet of Rome truly says: That punishment, moving with a hobbling gait, rarely fails to overtake crime, swift of foot; and this case exemplifies the truth.

The contrivers of this stupendous fraud omitted from their calculation a certain James Granger whom Exall, the company's superintendent and an arch conspirator here, put in charge of the mines when he left there for New York in March, 1868, in so-called flight; they failed to see that Granger's willingness to swear that he could not state the exact amount of money paid out by the company for improvements because "the hacienda has long since been *sacked of books, receipts, invoices, and other papers*, etc." (p. 50), when, at that very time, he had the books

and papers of the company in his possession, was no guaranty that his loyalty to the company and its crime would continue under the strain of neglect. Spurned and cast off by the company, which was considerably in arrears to him, he sought revenge and reparation by turning over to Mexico the prize of the books and papers which he and Exall had, up to that time, hidden and suppressed. (Pp. 289, 290.)

Of these books one is the letter-press copy book which was kept in the company's office at Tayoltita. It contains the invaluable evidence of the reports of the superintendents to the company, at New York, and other correspondence relating to its business; all written at or about the time of the occurrence of the matters therein mentioned, and before the existence of any motive to falsify, and covering the period of the alleged outrages suffered by the company, and all binding on the company as the statements and declaration of officers made in the course of its business.

As might be expected from its suppression, the matters detailed in this letter book are entirely irreconcilable with the testimony on which the claim rested before the joint commission and the umpire.

In addition to this documentary evidence, we have introduced several new witnesses of character and intelligence whose testimony gives further strength to the charge of fraud contained in the bill.

When therefore the truly meritorious defense of

Mexico had become obscured and discredited by the adverse decision of the umpire, it was a fortunate turn of events that placed in the hands of that Government this additional evidence, which completely overcame any presumption in favor of the award that might be insisted on, and showed still more satisfactorily that the United States had been made the means of enforcing upon a friendly power a claim of our citizens based upon fraud.

But, as clear as this evidence is, the United States has preferred that it should pass through the crucible of judicial scrutiny, in order that the action to be taken on the request made by the Government of Mexico might be characterized by the deliberation which its gravity demands.

Let us now proceed to examine and discuss the claim of La Abra Silver Mining Company, first with regard to its inherent improbability, and then as it appears in the light of both the old and the new evidence.

INHERENT IMPROBABILITY OF CLAIMANT'S CASE.

The celebrated Mr. Hume might have pronounced the claim of La Abra Silver Mining Company impossible, because contrary to experience and the accepted laws of conduct—the ordinary springs of human action. Certainly, no candid mind, whether of that philosopher's school or not, can fail to be impressed with its gross improbability.

What is that claim? It is said that in the year 1865, after peace had returned and when money could no longer be wrung from the distresses of the nation, certain New York capitalists, who afterwards became incorporated by the law of New York under the name of La Abra Silver Mining Company, and who had taken the prevailing fever for Mexican mining investments, proceeded to lay out a large sum of money in purchasing and developing a group of silver mines in that country, near Tayoltita, in the mining district of San Dimas, in the States of Durango and Sinaloa.

It is claimed that soon after this company began operations the Mexican military authorities commenced to despoil it of first one and then another of its loaded mule trains on their way to the mines from the seaport town of Mazatlan, on the Pacific coast, whence came all the company's supplies over a road 150 miles long and impracticable for vehicles of any kind.

It is claimed, furthermore, that the local authorities and the native population of the region of country where the mines are situated were hostile to and suspicious of all citizens of the United States, and especially so toward La Abra Company, which constantly suffered at their hands malicious interferences and annoyances that were a serious hindrance to its business, and that finally culminated in an outburst of open violence and lawlessness, before

which the company's superintendent, Charles H. Exall, fled for his life to Mazatlan, completely abandoning the mines and everything appertaining thereto.

It is alleged that these mines are unusually rich in silver, and would have readily yielded a million of dollars annually but for the persecution and violence the company had to contend against. At the same time it is alleged, with inexplicable inconsistency, that the company elected *to give up their ownership of the mines*, as valuable as they are alleged to be, and go before the commission with a mere speculative claim for their value.

It is also alleged that the mines were entirely abandoned by the company's superintendent in March, 1868, and that the company first brought its claim for damages against Mexico to the attention of the Government of the United States on March 17, 1870, *and after the joint commission was organized*, by a communication to the Hon. Hamilton Fish, Secretary of State. Up to that time the claim had not been brought to the attention of the Government of Mexico, either.

The amount of damages claimed in the letter of March 17, 1870, to Secretary Fish was $1,930,000, and the amount claimed in the memorial, filed on June 14, 1870, was $3,000,030, so that in less than three months the claim had grown by the amount of

$1,070,030. It was afterwards increased to $3,962,000, an addition of nearly a million of dollars.

Appealing, now, to experience as one of the tests by which the value of evidence is determined, we may ask, with some confidence, if it is not in the highest degree improbable that a company of Wall street capitalists, with a powerful government like the United States to back them, should have submitted to the robberies and outrages referred to, should have tamely bowed to the crowning outrage of their superintendent's violent expulsion from their property and his flight for his life, *without one word of complaint to Mexico or the United States*, until the letter to Secretary Fish of March 17, 1870, *written, we repeat, after the joint commission was organized?* Exall claims to have been driven from the mines in March, 1868, and yet this insult to the United States in the persons of its injured citizens, which, if properly brought to the attention of the people of the United States, would have been resented throughout the country, was kept from the public eye by these gentlemen in Wall street *for two years.* Is it credible that such an enormity, if it ever happened, could have eluded the vigilance of the press, or that these shrewd Wall street men would have failed to see the advantage of a prompt appeal to their Government for protection and redress?

This inaction on the part of the representatives of the company is the more remarkable in view

of the fact that on July 10, 1867, D. J. Garth, its treasurer, wrote to Exall, from New York, as follows:

> Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time *be firm in maintaining your rights*, and don't submit to imposition except by force, *and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.* (P. 285.)

And on August 10, 1867, Garth repeated these instructions in another letter. (P. 286.)

It is not pretended that a single written protest was made, in behalf of the company, to preserve the facts of any one of the outrages mentioned. Certainly we have a right to demand to know why it was that Exall did not obey his instructions and make such a protest, either at Mazatlan or San Francisco, after his pretended forcible expulsion from the mines. Not only did he omit to do so, but he actually failed to make any written report whatever to the company of the circumstances under which he was compelled to abandon its property and flee for his life. As a consequence, the president of the company, Mr. Collins, in his deposition in support of the claim, is compelled to make a statement which, coming from the head of a New York corporation, is simply incredible upon any rational theory of the honesty of the claim. He says:

> As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of

said company at that time, the quantity of silver ore which the company had then extracted at the mines, and its value and the quantity and value of silver ore which the said company could thereafter have extracted, deponent *has no knowledge, except what is derived from statements of others, and the depositions of others made in this matter, which deponent believes to be true.* (P. 39.)

Señor Avila, arguing to the umpire in support of the application by Mexico for a rehearing, thus comments on Exall's extraordinary conduct, supposing for the nonce his statements about the fate of the company in Mexico to be true:

It is said that the speculation was abandoned on March 20, 1868, and the first written report that the company ever received of the cause of the abandonment—this is at least the oldest date presented—was the affidavit of Charles H. Exall, produced in New York, December 20, 1869, one year and ten months after the abandonment had occurred.

It is said in this affidavit that it was determined upon by reason of the annoyances caused by the citizens, and by the civil and military authorities; these are mentioned in a way less vague than in the memorial, and the *imperial troops* are likewise designated as authors of the injuries; but not a word is said about the formalities and manner in which the abandonment was effected.

This same Exall in another affidavit in behalf of the company, *June* 11, 1874, says that his departure from the place of the mines was sudden and in secret, for fear of losing his life, because the day before Macario Olvera, the prefect, told him that it would be better for him to abandon the mines, as he, the prefect, was unable to defend the company against public sentiment, and that the Mexican residents of the district were determined *not to remain any longer out of work, etc.*

Let us suppose for a moment that all this was true; what would any man of common sense have done in Exall's place? What should any honest man, in charge of interests of such magnitude, have done?

Nobody evidently who considers himself worthy of this title would hesitate to answer that above all Exall should have consigned in a formal document the state in which those interests were left, and the cause that had determined him to abandon them; and supposing he was unable to find one single honest

man in the place he was about to leave, willing to authorize with his signature such a document, as soon as he reached some other place where his life was safe, his first care should have been to produce such a document.

Exall has not said where he did go to after leaving the mines, but the witness Antonio Peña, a resident of Mazatlan, said that he lent Exall there $250 to pay his passage to the United States, adding that he had not been reimbursed of that amount.

This proves three things: First, that the last superintendent to the mines after their abandonment, went to Mazatlan; second, that he then had no funds; and, third, that the funds of the company were also exhausted.

Now, what could have prevented Exall in Mazatlan to enter a protest or to produce such a document as we have been referring to?

All this is very improbable, and is rejected by common sense.

Let any honest man put himself in Exall's place and compare the course of action he would have followed, supposing true the inculpations made against the authorities of Mexico with that followed by Exall, who can by no means be considered an idiot, and the forcible conclusion can be no other than that there are no signs of truthfulness in the tardy story of the causes of the abandonment. (House Ex. Doc. No. 103, Forty-eighth Congress, first session, pp.88, 89.)

The learned counsel then makes the following reference to a case in point adjudged by the commission:

In the decision of case 994, "*W. L. Laird* v. *Mexico*," we read: "Nor is it to be believed that the claimant on his arrival to Matamoras should not have laid his complaint before the United States consul at that port." Why, then, should we believe that Exall should not have laid *his* complaint before the United States consul at Mazatlan? (*Ib.*, p. 105, note.)

Again, he says (*Ib.*, p. 105):

What we do find exaggerated, not to say preposterous, is the pretension that we should believe that the manager of such a large property should have abandoned it without being authorized to do so by its owners, and that a foreigner—and especially an American—entitled to the protection of his Government, should not apply for it before abandoning an enterprise in which there were millions in prospect, and in which hundreds of thousands of dollars had been spent.

In all the papers of the file the idea is repeated that the President of Mexico was very favorably disposed toward foreigners. If the subaltern authorities did not second that sentiment, what could have been more natural than to complain to the President of Mexico?

If the wrongs and injuries complained of had been actually committed, we must assume that the company would have been in possession of full documentary evidence to prove them, in the shape of the protests and reports of its superintendents in charge of the mines. The failure to produce such evidence or account for its absence throws a cloud of improbability and suspicion over the whole of the claimant's case which absolutely repels belief.

The following "beggarly account of empty boxes" was rendered by claimant in response to a notice in this suit to produce its books and the letters and correspondence of certain of its officers:

> Service of the above notice accepted this sixth day of June, 1894, and the above-named defendant says that neither it nor any of its present officers or agents have now or have had since the death of Mr. Worthington, former secretary of said company in the year 1871, or since his removal from New York a year or two previously, possession of any of the books (except its stock-certificate book) kept at its office in New York from the year 1865 to the year 1868, inclusive, or of any reports, letters, or correspondence addressed to its officers in New York within that time, and that neither the said company, its officers, or agents know the whereabouts of any such books, reports, letters, or correspondence, except said stock-certificate book.
>
> In regard to the books and records, letters, and correspondence of the company that were kept in its office at Tayoltita, defendant says that they were left at that place by the defendant's last superintendent (Exall) when he abandoned the defendant's property in February or March, 1868, and that since that time neither the defendant nor any of its officers or agents has had possession or control of such books or records, or any of them,

except the exhibits attached to Granger's deposition, taken on defendant's behalf May 14, 1870, and subsequently submitted to the United States and Mexican Claims Commission.

CRAMMOND KENNEDY,
Solr. for La Abra Silver Mining Company.

(P. 462.)

It is difficult for one accustomed to business methods to conceive why this president, Mr. Collins, did not require Exall, when he appeared before him in New York, fresh from the mines, with his dismal story on his lips, to make a sworn statement or formal protest of all the facts of his expulsion and flight, as he had been twice instructed to do by Treasurer Garth, if occasion should require. That he did not, is, we think, incompatible with the theory that the company conceived that it had a righteous claim against Mexico, for it is impossible to suppose that, in such a case, the company would not have looked forward to making a demand, through our Government, on that country for indemnity, as indicated by Treasurer Garth, in his letter to Exall of July 10, 1867, quoted above. We feel quite sure that the patience of the court will not be taxed by the monstrous contention that these Wall street capitalists would have treated with unconcern a loss involving a matter of nearly four millions of dollars, as it grew to be before the commission, if such a loss had occurred. *Actions speak louder than words*, and the language of their conduct, in the light of what Exall reported to them after his so-called flight, is conclusive that his story was that

the mining enterprise had proved a total failure from the worthlessness of the mines and the incompetency of those in charge of them, and not from the robberies and violence of the Mexican authorities.

This unexplained and apparently inexplicable inability of La Abra Company to furnish from its own records a detailed history of the outrages it claims to have suffered in Mexico is well calculated to provoke from this court the animadversion with which it was visited by the umpire, Sir Edward Thornton, and, beyond doubt, disentitles the company to any relaxation of the stringent rules of evidence. Indeed, the improbability that a company composed of Wall street capitalists, and embarked in so large an enterprise, could not have produced such evidence is so great as to justify the conclusion that it has been deliberately suppressed. And such a conclusion, bad as it is, seems absolutely established by the failure of the witness, Collins, who was made president of the company in 1866, and was both a considerable stockholder and a large creditor of the company, *to attempt to account, in any way, for the nonproduction or disappearance of the books, papers, letters, and records of the company's New York office.* It will be observed that when Collins became president the *company was in full operation.* He was, furthermore, a "wholesale tea merchant," and the impression is sought to be made that he was a good man of business; and yet, as

we have seen, he confesses that all his knowledge about the facts underlying this immense claim "*is derived from statements of others and the depositions of others made in this matter, which deponent believes to be true.*" (P. 39.) Of what value, we may ask, is evidence of character or church membership in the face of his silence as to the records, books, letters, and papers of the company? The eminence claimed for him as a man of business and piety makes this silence all the more damaging to the company and all the more difficult to comprehend. As a man of affairs, as a man of common sense, Collins knew the value of the records of the company. His failure to refer to them or account for their absence is strong to show fraud.

A bankrupt who had kept no regular books, and complained of the severity of an order of court requiring him to render a more satisfactory cash account, was thus rebuked by Sir George Jessel:

> I have often lamented that there is not a forensic term for impudence. If there was, I should apply it to this bankrupt. * * * He says that he never kept any books. What are we to say to a man carrying on this large business who kept no books? In France he would be subject to severe criminal proceedings for not keeping books. There is no such law in England. But though he escapes criminal proceedings he is not exempt from censure, and when he becomes bankrupt he must not expect to be treated in the same way as an ordinary business man who keeps books from which his creditors can ascertain the state of his affairs. The present bankrupt has no right to complain.
>
> Now, what does he say about his papers? He has no papers, no books of account no letters from his creditors or his debtors, nor any of the various other documents which he must have

possessed regarding the companies which he promoted, saving the sums which he received and paid. They are lost or destroyed. Not one of them is forthcoming, and he has neither a book nor a paper—nothing in the world except a few recent counterfoils and a bankers' pass book. (*Ex parte* Moire, 21, Ch. D., 63.)

There is small room for doubt that Sir George Jessel would have administered a similar rebuke to appellant if he had been a member of the commission that passed on this claim, for surely it was a case where the stern justice of that equity judge should have been applied with increased severity if anything. And during the investigation of the charges against La Abra by the Senate Foreign Relations Committee its chairman expressed himself in much the same strain as the judge. (S. Rep. No. 2705, App., p. 723.)

This failure of the company to produce in evidence the books and papers which must have been in its possession as indispensable business records, and which, according to Garth, were in its possession at the time the company filed its memorial in the commission (pp. 715, 716), is only explicable on the ground that they were *hidden or destroyed* to prevent their being used against the company before the commission.

The mere fact, therefore, that no officer of the company can tell what has become of the books, papers, and letters of its New York office is sufficient to condemn the claim, *in odium spoliatoris.*

But there is another improbable feature in the

case which calls for attention. It is claimed that the company's mines were rich in silver to an extraordinary degree, so much so, indeed, as to have attracted the special attention of Baron Humboldt and other celebrated explorers. But if it is true that these reports of the richness of the mines were borne out by the company's experience in working them, how is it to be explained that the company preferred to waive its rights as proprietor of the mines and ask, in their place, *the uncertainty of an award of damages?*

That the company claims to have taken this extraordinary course can not be doubted. In his second deposition, George C. Collins, then its president, says:

> Question 8. State whether or not said company, at the time they abandoned their said mines, hacienda, and property, in March, 1868, gave or put, or at any time since have given or put the same, or any of them into the charge, or under the control of any person, or authorized any person to do so, or in any way directed or authorized the same, or any part of them to be used, leased, sold, or otherwise disposed of? State fully and especially with reference to James Granger.
>
> Answer. The said company did not then, nor has it at any time since, placed their said mines, hacienda, and property, or any part of them in charge or under the control of James Granger, or of any other person, nor authorized him or any person to do so, nor directed or authorized him or any person to sell, lease, use, or in any way to dispose of said mines, hacienda, and property, or any part of them, and if he, or any other person has exercised any charge or control over them, or any disposition thereof, such acts were wholly without any authority from said company, or of any authorized agent or attorney of the company, and have never been ratified or recognized by said company, nor by any authorized agent or attorney of said company.
>
> Question 9. If said Charles H. Exall had attempted to confer

upon said Granger, or any other person, any such power of the charge, or control over, or disposition of said mines, hacienda, and property, or any part of the same, what authority had he, if any, from the company, or from any attorney or agent of the company, for so doing?

Answer. None whatever.

Question 10. What has become of said mines, hacienda, and property?

Answer. From copies of Mexican records shown me, it appears that the company's mine "Rosario" was denounced by said James Granger, April 8, 1871, and that he and a Mexican, named Francisco Torres, were put in possession of it by the legal authorities of the State of Durango, in Mexico, August 11, 1871, and I am informed and believe that the stamp mill and mining tools of said company have been all sold and leased out by the Mexican authorities of that district, and the same partially or wholly worn out by use at the works of Mexican miners; and also that the other mines, and the hacienda, and reduction works of La Abra Company have, since August, 1872, been denounced, and legal possession given of them by the Mexican authorities at Durango to the parties denouncing, and that the same are being worked by Mexicans successfully.

Question 11. State whether or not any person has accounted to said company for their said mines, hacienda, and property abandoned in March, 1868, or for any part thereof, subsequent to said abandonment, or has paid for the same, or paid anything on account of the same, or any part thereof?

Answer. No; no person has so accounted, or paid anything, for or on account of the same, or any part thereof. (Pp. 147, 148.)

In his first deposition Collins said:

Said company abandoned their said mines, works, silver ores extracted, and property, in March, 1868, the same at that time being under the charge, control, and supervision of Charles H. Exall, for said company. Upon said abandonment, and in consequence of it, the stock of said company became wholly valueless, and has so ever since remained, and the said company have wholly lost the moneys so expended and owing by said company and the profits which they would have realized from said expenditures. (P. 39.)

In his second deposition Exall is equally emphatic on this point, saying:

I did not leave said mines, hacienda, or property in charge of said Granger, or any other person, nor did I give any charge,

control, power, or authority of or over the same, or any part of the same, to him, or anyone else, and if he, or any other person has taken charge or control of said mines, hacienda, and property, or of any of it, or has sold, used, or in any way disposed of any of it, each of such acts was without any power or authority, or right whatever to do so, so far as any act by me or for me, or on my part, as superintendent or otherwise, is concerned. (P. 152).

If the company had been forcibly and lawlessly expelled from Mexico, its omission to work the mines under such circumstances could not have operated to its prejudice under the Mexican mining laws. Certainly the Government of the United States, if appealed to, would have resisted to the bitter end any attempt on the part of Mexico to forfeit the company's rights on the ground of a nonuser caused, as alleged, by the lawless acts of that Government itself.

It is absolutely incredible that the company should have waived such rights of property with the expectation of getting an award of damages equal to its estimate of their value, and as a substitute for them, because of the well-known element of uncertainty in the valuation of this kind of property, which renders the best attainable evidence in its support an unfit basis for judicial action. Consequently the arbitrator, Sir Edward Thornton, actually refused "*to make an award on account of the so-called value of the mines*," and gave the following reasons for the refusal:

Mining is proverbially the most uncertain of undertakings; mines of the very best reputation and character suddenly come

> to an end either from the exhaustion of the veins or from flooding or from some of the innumerable difficulties which cross the miner's path. A certain interest upon the money invested is a much surer compensation than prospective gains; the latter are, in fact, the interest upon the sums invested; they may be greater or less or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so-called value of the mines must depend upon the prospective gains. It may be great, small, or nothing, and may be but a mere snare to lead one on to utter ruin. It is, in the opinion of the umpire, equally inadmissible that the Mexican Government can be called upon to pay a value the amount of which, even approximately, it is impossible to decide. (P. 9.)

And this court, in *Southern Development Co.* v. *Silva* (125 U. S., 247, 252), quotes with approval the following from the opinion of the Supreme Court of Illinois in *Tuck* v. *Downing* (76 Ill., 71, 94):

> No man, however scientific he may be, could certainly state how a mine, with the most flattering outcrop or blow-out, will finally turn out. It is to be fully tested and worked by men of skill and judgment. Mines are not purchased and sold on a warranty, but on the prospect. "The sight" determines the purchase. If very flattering, a party is willing to pay largely for the chance. There is no other sensible or known mode of selling this kind of property. It is, in the nature of the thing, utterly speculative, and every one knows the business is of the most fluctuating and hazardous character. How many mines have not sustained the hopes created by their outcrop?

The failure of the company, therefore, to call upon our Government to require Mexico to reinstate it in possession of the mines, if for no other reason than to enable it to sell them, can only be accounted for on the theory that the property was nearly, if not entirely, worthless, and had proved "a mere snare to lead one on to utter ruin," to borrow the words of the umpire.

If La Abra Company had set up a claim which could only be supported on the theory that there had been a suspension of the laws of matter, this court, if it consented to take cognizance of such a case, would demand the amount of proof necessary to substantiate a miraculous event. So here, as it seems to us, the court must require the claimant to show, by irresistible evidence, how it was that it pursued a course of conduct which was contrary to the principles of action that control men generally under similar circumstances. But the record contains no attempt even to explain the phenomenon.

Desperate indeed must be the situation of a case that can not be supported without sapping the stability of the laws of human conduct!

To disobey the teachings of experience in passing on evidence would be to disregard the only test of credibility, and often lead to the irresponsibility of courts for their decisions of questions of fact. It would be precisely as if courts of equity should decide upon their own notions of equity, or according to the length of the chancellor's foot, regardless of fixed principles. In both cases the result would be the destruction of "the security and the feeling of security which ought to be the principal end of political governments and law."

The supreme court of New Jersey present the

same idea in a striking manner in the case of *Daggers* v. *Van Dyck* (37 N. J. Eq. R., 132). They say:

> Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself—such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance.

Mr. Starkie also says:

> Experience points out some laws of human conduct almost as general and constant in their operation as the mechanical laws of the material world themselves are. That a man will consult his own preservation, and serve his own interests; that he will prefer pleasure to pain, and gain to loss; that he will not commit a crime, or any other act manifestly tending to endanger his person or property, without a motive; and conversely, that if he has done such an act he had a motive for doing it, are principles of action and of conduct so clear that they may be properly regarded as axioms in the theory of evidence. (Evid., vol. 1, p. [487].)

It is manifest, therefore, that the claim can not stand when tried by the ordinary tests of credibility, there being no evidence to show a suspension of the laws of human conduct that operate upon men generally, supposing such evidence, if attainable, to be cognizable by courts of justice.

THE SUSPICIOUS GENERALITY OF THE MEMORIAL.

But, in addition to the improbability, not to say incredibility, of the claimant's case, the studied employment of generalities, as to the several grounds on which the claim rests, in the presentation of it in

the memorial before the commission, is more than suggestive of fraud.

A general mode of statement is the cloak of darkness in which fraud habitually clothes itself. The false witness, for example, is keenly alive to the fact that the exposure of his perjury is almost certain if he ventures into details, and, consequently, he is careful to avoid danger by feigning forgetfulness. It has been truly said that Providence has appointed this inattention to particulars "*as the snare for the false witness and the safeguard of innocence.*"

The frequently recurring *non mi recordo* (I do not remember) under which a certain Italian witness, produced against Queen Caroline on her trial before the House of Lords, took shelter when pressed for particulars on cross-examination, will not be forgotten so long as Mr. Brougham's speech in defense of his royal client continues to be regarded as a splendid example of forensic discussion.

The memorial alleges that the mines, at the time of their abandonment, were producing "a large amount of the richest ore" and were "in the act of realizing the extraordinary profit of a million of dollars per annum;" but, strangely enough, not a word is said as to when, where, and by whom the tests or assays were made on which these apparently extravagant statements were advanced.

It is said that the company was forced to abandon the mines "by reason of unfriendly and

illegal acts of the Mexican officials," and that "an intense prejudice was constantly manifested by the authorities, both civil and military, and by the Mexican populace, against all Americans, and especially against those engaged in mining, including said company;" but we are not informed as to the character of these "unfriendly and illegal acts," or as to who were the "Mexican officials" who committed them, or any of them, and are left in the same uncertainty as to the particular manifestations of the "intense prejudice" constantly shown by the authorities and the populace.

Was it enough to allege in the memorial that "the property of the company and the persons and the lives of the employees were threatened by the authorities and the people?" Would not an honest claimant have deemed it imperative to support so extraordinary a statement by giving some insight into the particular instances in which the Mexican authorities and people had been guilty of conduct that would have ill become savages?

How are we to account for the failure of the memorial to give the particulars of the seizures of the company's mule trains, loaded, as they are said to have been, with supplies for the mines? Is not such silence more than derogatory to the claimant's case? Is it likely that an honest claimant would have observed silence when called on to speak by the strong considerations of interest and fairness?

It must be admitted that the memorial does approach particularity in its reference to the personal difficulty that occurred between the superintendent of the company and the local judge, Perez, which, however, had nothing whatever to do with the mines or the company's business, but, *being an actual occurrence*, and serving, by distortion, to give some color to the case, though really an unimportant incident, the account of it in the memorial is inflamed and exaggerated by some small attention to detail. But, even in this particular, the memorial is suspiciously reticent, in not disclosing so important a circumstance as the name of the superintendent, Exall, who, it is claimed, was arrested, fined, and imprisoned without regard to law and *who was an active participant in the preparation of the case*—a fact which could not have been withheld for any other reason than that of *embarrassing Mexico in preparing her defense.*

The contrast, in this respect, between the particularity of this part of the memorial and the generalities of its other parts naturally suggests the question whether the contrast is owing to the presence of a modicum of truth in the former and its total absence from the latter.

Manifestly, the memorial filed by La Abra Company before the commission could not have been better adapted to its purpose if it had been drawn to facilitate perjury or avoid the danger of serious variance between it and the evidence to be fabri-

cated in its support, or to embarrass the Government of Mexico in preparing its defense.

It would be unreasonable to the last degree to suppose that the Government of Mexico, which, like other Governments, is incessantly occupied with what Lord Coke calls *ardua regni*, had any acquaintance with the facts of claimant's case, or that it could obtain acquaintance with that case except by investigation and inquiry, prosecuted in the light of the claimant's own statements in its memorial. The Government of Mexico had, therefore, the right to expect that those statements would be sufficiently particular to guide such investigation and inquiry, and when the commission saw how far short of this the memorial fell, it is respectfully submitted that it was its duty to dismiss the case upon the ground on which it condemned in part the presentation of the claim of the Arco Minco Mining Company, in which the American commissioner, delivering judgment, said:

> *The least* claimant should have done was to have stated *in the memorial* what taxes and forced loans were levied, on whom, and at what date, and what quantity and description of property, and the value thereof. This information we were entitled to have *in the printed statement of the case.*

If the umpire was correct in holding that the defense of Mexico had failed, which we are far from conceding, there can be no doubt that the prime cause of the failure was the inexcusable and pre-

meditated obscurity of the presentation of the case that Government had to meet.

Señor Avila, in his very able argument supporting the application of Mexico to the umpire for a rehearing, well and pertinently comments on the seriously defective statement of the claimant's case in the memorial. He says:

> Neither this commission nor any other municipal court can pass judgment on mere intentions or acts of the will, and they can only do it when facts are stated. If the persons invested with public authority in the district of San Dimas, actuated by fears more or less founded that the agents of the company were conspiring against the integrity of the Mexican territory, did not sympathize with them, this circumstance can not constitute of itself a good ground for a trial, so long as that want of sympathy did not pass into acts. * * *
>
> The charges of threats on the part of the authorities, acts of violence directed or stimulated by them, seizure of trains, assassination of one of the company's employees, and the purpose of expelling its agents from the country, made in a vague manner, without any precision as to dates, and without stating minutely the facts, are as deficient as the general imputations of hostilities, and of false imprisonment of the superintendent of the company, neglecting to give his name or any other data that could enable us to determine the event, and can not be esteemed a sufficient ground on which to base a claim.
>
> The American commissioner, of whom nothing could be said with less foundation than that he carried his exigencies too far when parties interested in claims *against* Mexico were involved, in delivering his opinion in the case of the "Arco Minco Mining Company," No. 937, and alluding to the requirements to be fulfilled in presenting claims before this commission, said:
>
> "*The least* claimant should have done was to have stated *in the memorial* what taxes and forced loans were levied, on whom, and at what date, and what quantity and description of property, and the value thereof. This information we were entitled to have *in the printed statement of the case.*"
>
> Had he acted in this case consistently with his theory, he would not have taken the claim of the Abra Company into consideration, because it is still more vague and indefinite than the Arco claim, in which, at least, it was stated that a body of Mexican troops camped near the mines and carried from them

powder, implements, etc. This is certainly more definite than the seizures of trains with provisions, without stating when and where they were made, and yet the commissioner deemed that inculpation to be an "*indefinite charge*," and refused to take it into consideration. (H. Ex. Doc. No. 103, 48 Cong., 1st sess., pp. 86, 87.)

EXALL'S TESTIMONY BEFORE COMMISSION SHOWS CLAIMANT'S BAD FAITH.

It was certainly to be expected that the evidence adduced before the commission in support of the claim would at least supply the details in which the memorial was wanting, especially as this evidence was taken without notice to the Government of Mexico, and, consequently, without cross-examination. Indeed, natural justice demanded that Mexico should have reasonably specific information from the evidence certainly, if not from the pleadings, of alleged grievances which were the foundation of a claim for nearly four millions of dollars.

But, so far from this being the case, the testimony before the commission in support of the claim, besides having been elicited in a large degree by a suggestive, leading course of interrogation that would have insured its rejection by any court having a proper regard for the established rules of procedure, is just as indefinite and unsatisfactory as the memorial itself, with the very suspicious exception of certain evidence introduced by way of rebuttal, which Mexico had no opportunity of meeting, un-

der the rules of the commission, and which was therefore *in no danger of contradiction.*

If the claim is an honest one, it was in a high degree incumbent on the claimant to see that its chief witness, Charles H. Exall, the superintendent *anonymously* referred to in the memorial, gave his testimony with such fairness and such particularity as to remove the perplexing uncertainty in which Mexico was left by the claimant's disregard of the rule of the commission, that every fact of a claim should be laid in the memorial with its appropriate time and place, and that "the *kind or kinds* and *amount* of property lost or injured" should be stated, together with "*the facts and circumstances attending the loss or injury out of which the claim arises, and all the facts upon which the claim is founded.*"

It was vital to the claimant's case, if founded in truth, that Exall, the chief actor in the drama, should be examined with care upon the details of the grievances which, *he alleges*, were heaped on him and eventually drove him from the company's mines a fugitive for his life, because it was manifest to any ordinary understanding that he was seriously, if not hopelessly, discredited already by the unexplained and, as it has turned out, inexplicable inconsistency between his conduct as La Abra's superintendent and his representations embodied in the company's memorial, in this, that, according to the established laws of human conduct,

if he, as custodian in Mexico of vast interests of American citizens, had been treated as he says he was by the authorities and people of Mexico he would certainly have gone before some American consular officer or notary public and made one or more formal protests in writing under oath of the facts and circumstances of the case; and would, furthermore, when he returned to New York a fugitive, have certainly submitted a written report to the company, setting forth everything connected with his forced abandonment of the mines, machinery, and movable property of the company, and his leaving the same, as he alleged, at the mercy of an infuriated populace urged on by the local authorities.

It was, therefore, vital to the credit of this witness that he should be required to testify with such attention to detail as would give Mexico a fair opportunity to test the value and integrity of his statements.

It reflects, then, most seriously on the claimant's case to find that its chief support before the commission, Exall's evidence, is couched in generalities in its material parts.

Let us now see how this witness tells the story of his and the company's persecutions and sufferings, in his own words, in his deposition in chief:

> The feeling and prejudice of the authorities, both military and civil, and of both the local and national authorities, at Tayoltita, and in the States of Durango and Sinaloa, were very inimical to us. It was currently reported by the Mexican au-

thorities and citizens, and we were accused of meanly coming there for the purpose of purloining the silver and gold of Mexico with which to enrich the United States, and finally of stealing the States of Durango and Sinaloa from Mexico, by annexation of the same to the United States, and this feeling and prejudice soon took an active hostile form, and our lives were threatened by both the citizens and the troops of the legitimate Government of Mexico under President Juarez, its present chief magistrate; those threats were frequently made, and we were in constant fear for our lives, and in pursuance of these threats, one of the employees working for said company, was actually killed while coming up from Mazatlan with a train of mules for said company, and we were finally driven off, and compelled to abandon our mining operations, by said authorities. The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine: no good reason ever having been given me for my arrest or release. I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company; and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company, to save our lives. I can not state dates and names with any degree of certainty. Mexican names are hard for me to remember. The Imperialist soldiers, and citizens sympathizing with their cause, also threatened and interfered with us, for the reason, as they stated, that we were in sympathy with the legitimate Government of Mexico under President Juarez. Said interference

occurred at various times during the whole progress of the work while I was superintendent, and we were finally compelled to abandon the company's mines and property, about March twentieth, eighteen hundred and sixty-eight.

The military authorities of the Liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains on the road from Mazatlan to our mines in the State of Durango, loaded down with provisions and stores for the use of the employees of said company, and they, the military, appropriated them to their own use, upon the plea that they were not provided for, and must have them as a military necessity.

Large numbers of our mules, and thousands of dollars' worth of our stores and provisions, were captured in this way by the said military, during the progress of the war there.

And finding it little or no better at the close of the hostilities, indeed it was even worse in the mines, for then they seemed to turn their whole attention to what they called a purpose on our part to annex Durango to the United States. And it was in vain that we protested that we had no such intention.

The report had become general, and we were so harassed that it was impossible to continue our work with safety, as I have before stated.

The military under Maximilian frequently captured our mules and stores in the same way, and shamefully abused our men, who were conducting the trains. They assigned as a reason for so doing that we, the said company, and its employees, were Republicans, and hostile to the interests of their so-called Imperial Government, which was true.

And so, between the two fires, we had no protection, neither of the contending parties respecting our rights under the law, but both of them robbing us. Large quantities of silver ore was taken or stolen from our mines after we had taken it out, and such were the threats against us, that we did not dare to go out and defend it, as we would have been in great danger of losing our lives by so doing. The ores so taken were the very richest, and those containing the largest amount of silver.

The captures or robberies of our mules and stores, of which I have spoken, occurred at various times during the latter part of 1866, and the early part of 1867; that is, the most of them occurred during the times stated, and principally by the Liberal authorities. (Pp. 31, 32.)

Now, when we consider that Exall claimed to have been a witness of and a sufferer from these so-called persecutions and molestations between about

September 11, 1866, and about March 20, 1868, *a period of a little over eighteen months*, it is remarkable indeed that he could point to the particulars of but *one single instance* of the malicious and lawless acts that had made mining operations impracticable and driven him from the mines, and that not the instance claimed, in the court below, to be the *most aggravated and to be supported by documentary evidence.*

It may be, as he pretends, that he "can not state dates and names with any degree of certainty" and that "Mexican names" are "hard" for him to remember, but that fails to explain away his failure to identify by *essential particulars* the wrongs to which he had been subjected, as he would have done, undoubtedly, if what he relates in generalities had ever occurred.

It is to be noted that the deposition given by Exall on December 2, 1869, *was the first statement in writing he had made touching his pretended expulsion from the mines, on March 20, 1868, an interval of something over fifteen months;* and as those having in hand the preparation of the claimant's case must have known that to allow the witness to avoid giving particulars in this first-written statement of his wrongs, under the flimsy excuse of a *non mi recordo* as to names and dates, must inevitably encumber the case with an additional load of improbability, the inference is a fair one that this vagueness was *predetermined*, for the double purpose of shielding

Exall's perjury and of baffling Mexico in any attempt to expose it. In no other way does it seem possible to make the conduct of the witness and of the claimant's agents consist with common sense and the ordinary rules of human conduct.

But it must not be supposed that we admit that Exall truthfully related the one single instance of persecution he was able to identify—we mean his so-called imprisonment by the local judge at Tayoltita—upon which the claimant rings a variety of changes, in the endeavor to make this one incident supply the place of the many that should have been produced, and whose absence from the record it is not attempted to account for.

THE PEREZ AFFAIR.

Exall relates the affair with the evident purpose to create the impression that the judge was guilty of an unprovoked aggression; but, the truth is, the difficulty was started by some remark of his own, in bad Spanish, which the judge took as insulting, whether so or not. This appears by the accounts of two other witnesses of the claimant, James Granger, a particular friend of Exall's and one of his subordinates at the mines, and John P. Cryder, also an intimate acquaintance and a near neighbor of his.

Granger says (p. 48):

> In the month of December, 1867, or January, 1868, the superintendent, Charles H. Exall, was arrested and imprisoned by the

"juez conciliador" of Tayoltita, Nicanor Perez, on a mere pretext, without any reasonable cause whatever. The particulars are as follows: Mr. Exall was occupied in a private room, and in private conversation, and while so engaged, said juez, or judge, Perez, entered the store at the hacienda, and without speaking or asking permission, he passed into a private storeroom adjoining, and Mr. Exall observing this, stepped to the door of said storeroom, and in a polite manner addressed said Perez, saying that no one was allowed to enter said storerooms without license, and if he had any business to please communicate the same to him. Said Perez came out of said storeroom in a great rage, and asked Mr. Exall if he thought he, Perez, was a thief, or wanted to steal anything. Mr. Exall denied any such idea, and stated that, in requesting him to leave the private storeroom, he was merely carrying out the general rules of the company.

Said Perez would listen to no explanations, and when he went out remarked that he, Exall, should hear from him. About half an hour after, an order came to the hacienda for Mr. Exall to attend, forthwith, before the said juez, or judge, Perez, which order Mr. Exall obeyed, and upon entering said court room, said Judge Perez commenced a tirade of the most infamous personal abuse of said Exall, without allowing explanation or justification, sentenced said Exall to pay a fine of, I think, about $50, and imprisonment for two months. Exall was confined in the hacienda until the next morning, when he was sent for by said "juez," who did lock up said Exall in an old empty house, with the declared intention of sending him to San Dimas to complete his sentence. Said judge remarked, at the same time, that he could not permit Exall to ride even his own mule to San Dimas; that he should treat him the same as he would treat any common prisoner.

Cryder testifies to the same effect (pp. 68, 69), and another witness, Marcos Mora, called by claimant, says that the local judge, Perez, *told* him that he had imprisoned Exall "*because he had personally insulted him;* and that, in revenge, he had fined and imprisoned him." (P. 87.)

Both Granger (p. 48) and Cryder (p. 69) tell us that the judge had Exall brought before him, and, after a volley "of the most infamous personal abuse,"

sentenced him to pay a fine of $50 and suffer two months' imprisonment. Cryder says the judge ordered the guard "to compel Exall to go all the way to San Dimas on foot and not to allow him even to ride his own mule, saying the judge would learn the Gringos (as Americans are called) *to treat him with deference and respect.*" (P. 69.)

Exall, we are further told, was then disposed of by being locked up for the night in a wretched place with "a most disgusting smell" and "filthy beyond description," where Granger and Cryder found him next morning "engaged in the work of defending himself from the attacks of millions of fleas." (Pp. 69, 48.) After this night's imprisonment we are told Exall was released next day on giving security for the payment of the fine.

Turning now to Exall's testimony (p. 31), we discover that he makes *no reference whatever to the judge's abuse*, which, if it happened, was worthy of "a beggar in his drink," or *to the harsh instructions to the guard*, or *to the "millions of fleas."* Had he forgotten these circumstances of insult and aggravation? Was it possible for him to lose sight of them, *if they had ever happened?* Can that shortness of memory, *so useful to him*, be allowed to avail him here? Was it probable that this swift witness would forget to detail, with unction, facts so well calculated to inflame his story of persecution?

Exall's account of his difficulty with the judge is discredited by other omissions besides his silence as to the provocation he himself offered, whether intentional or not; that is to say, he failed to give the judge's name, the better to identify the incident, and the date and duration of his imprisonment—*facts which must have been intentionally withheld*, in order to further the witness's purpose to produce the impression that the affair with the judge was extremely serious. It would have defeated this purpose if the witness had told the truth and given the same account of the matter in his deposition as he gave on the day of its occurrence in his written report to the Jefe Politico at San Dimas, asking relief from the *constructive* imprisonment under which Judge Perez had placed him, in which he uses this language:

> After being his prisoner for an hour, not being allowed to speak to anyone, and being guarded, I asked if he intended putting me in jail please to do so, as I had a headache, and wished to lie down. *He then gave me permission to go to the hacienda, but to consider myself still his prisoner*, and ——— at his house whenever ordered. (P. 280.)

That the imprisonment from which Exall requested the jefe político to release him was nominal only clearly appears by the concluding words of Exall's report, namely: "Please act on this immediately, *as I don't care to be any longer under restraint than possible*," the "restraint" referred to consisting in the judge's command "*to consider*" *himself* "*his prisoner*," and report "at his house whenever ordered."

The report contains the following detailed account of the "affair":

C. JEFE POLÍTICO, *San Dimas, Durango:*

DEAR SIR: This morning about 11 o'ck Sr. D. Nicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then walked into the storeroom adjoining the store, the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, *in as polite Spanish as I was master of*, requested him to come out, and after he came out I shut the storeroom door. He then asked me if I thought he was a rogue and wanted to steal. *I told him as well as I could*, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business, and wanted to see Matias (our ——) who was at the time working in the storeroom. I immediately called Matias out, and he and the ——— then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to ———.

At about 12¼ o'ck, just as our dinner bell had rung, a mozo brought an order from the judge, which I inclose. After we had eaten, Mr. Slone went up to see the judge. He had collected around his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his room, I requested Mr. Slone to ask him, *as I was unable to ask him myself*, what was the business he wanted to see me on. *He replied he had been grossly insulted, and pushed out of the store, when he was on official business.* This I of course denied in a most emphatic manner, having acted only as before stated. I then told him that in requesting him to come out of the storeroom I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting anyone to go in the storeroom without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, *and, from my ignorance of the language, could not argue the point.* After some time spent in talking to this effect, I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good-by. As we reached the corridor, he said *he never wanted to see me in his house, except on official business.* To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would send a force after me, and they would

shoot, and insisted on my return into the house. I did so, without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from Sn. Dimas, and would listen to nothing that I might say. (P. 280.) (Italic our own.)

Taking Granger's, Cryder's, and Exall's accounts together, it is perfectly evident that they do not give a correct version of the "affair," for it is hardly possible that Judge Perez could have become so violently excited unless he had received a real or imagined provocation bearing some reasonable proportion to his conduct. It seems to us, therefore, fair to conclude that either Exall intended to insult the local dignitary, or that his bad Spanish, emphasized by shutting the door on the judge's back, was so understood; for the latter went off in a tempest of wrath, demanding to know if Exall "*thought he was a rogue and wanted to steal*," and also remarking that he "was there on *official business* and wanted to see Matias (our ——), who was at the time working in the storeroom."

According, then, to this narration of Exall's in his report, it is evident there was much more provocation offered to the judge than the depositions show, which can only be accounted for by the circumstance that when the testimony was given there was *a*

strong motive for manipulating the facts, whereas when the report was written there was none.

This examination of the Perez incident shows clearly that it has no tendency whatever to establish the existence of any hostility toward La Abra on the part of the local authorities at Tayoltita, much less a degree of hostility which compelled the company, as contended, to stop business and abandon its mines and other property. It was, on the contrary, a purely personal difficulty between Exall and the judge, and there is not a particle of evidence to show that it did, in any way, affect the company or its business. Indeed, according to Exall's report, when he and his companion, Sloan, were dismissed by the judge, the latter remarked that he never wanted to see him (Exall) in his house "except on official business," which did not look much like he was trying, by tyrannical methods, to force the company out of the country, or was disposed to deny it, or its superintendent, even, his official countenance whenever it should be invoked.

It is to be noted, also, that Exall's report shows that the Perez "affair," as he calls it with some levity, occurred on January 7, 1868, *more than two months before he claims to have been driven from the mines.* It is for this reason a suspicious and derogatory circumstance that he does not make the slightest effort to give the date of the "affair" in his deposition, fearing, as we must assume, that its

remoteness from the time of his so-called flight, namely, March 20, 1868, would destroy the weight of the incident as evidence. Certainly there is not, in our apprehension, the least handle for saying that this "affair" had anything to do with the so-called expulsion of the company from Mexico.

But the Perez "affair," as presented by Exall, Granger, and Cryder, *proves too much*, for, considering the terrorism which they say prevailed in the mining district of San Dimas, it is remarkable that Exall dared to treat the judge as an intruder by requesting him to leave the room he had entered against the company's rules, and it is equally remarkable that the judge should have paid any attention to the request. The fact that the request was made and straightway obeyed by the *tyrant* adds no little to the improbability of the claimant's contention that its enterprise in Mexico was broken up by a reign of terror.

In the conclusion of his report, Exall thus freely refers to the judge:

> My dear sir, I have before given you as minute a state of events exactly as they occurred as 'tis possible to write, and from which you will see that if I have given any cause to Dn. Nicanor to imagine himself insulted, it was done ignorantly, as nothing was further from my thoughts than insulting him or hurting his feelings in any manner, *and I submit it to your judgment whether I deserved the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me.* But for being a prisoner, I would come and see you in reference to the matter, but unfortunately necessity compels me to write.
>
> *Dn. Nicanor intends writing to San Dimas, and will of course*

give his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible. (Pp. 280, 281.)

It may be repeated that this report was dated January 7, 1868, *a little over two months before Exall was driven from the mines, as he says,* but its tone is certainly not that of a person who was living outside of the protection of the authorities and among a hostile, lawless people, and who testifies that he and the other employés of the company at the mines "*were in constant fear of our lives.*"

This exaggeration of Exall's is rendered more absurdly false by the testimony of Sloan, who went with him before the judge, and who says that, "from what he saw of *the affair*," the difficulty grew out of the fact that "the judge went into the hacienda to speak to one of the peons who was at work there, *and the superintendent thereupon put him out*" (p. 120). Indeed, according to Exall's own report, when he appeared before the judge, and asked what he wanted, the judge replied, that "he had been grossly insulted, *and pushed out of the store,* when he was on official business" (p. 120); and Granger's statement, that Exall was imprisoned "for two or three days because he REPROVED Judge Nicanor Perez," is quoted with approval in respondent's brief below (p. 114). Bold conduct, indeed, for a *defenseless* American who was *in constant fear for his life!*

Contrast all this with Exall's statement in his deposition that he was arrested by order of the local magistrate and "*thrust into prison!*"

The prison into which this martyr was "thrust" was *the hacienda where he lived.* He says he was ordered to remain there; and that he considered himself a *prisoner* is shown by the concluding words of his report on appeal to the Jefe Politico: "Please act on this immediately, as I don't care to be any longer *under restraint* than possible" (p. 281). It is, evidently, to this imprisonment that Sundell refers when he says:

> Exall came over to San Dimas and told me he had some trouble with Nicanor Perez, because Nicanor Perez wanted to go in the storeroom where Exall was, and Exall got him out of the storeroom and Nicanor Perez got offended. If I remember right, he arrested Exall for *a few hours.* (P. 527.)

Nor is it inconsistent with this view that the witness, in his next answer, says that Exall's statement to him was made "the next day Exall got out," for the durance at the hacienda was as much an imprisonment to Exall as though he had been shut up at Raventon, or anywhere else. As will appear further on, the witness probably fell into error in saying that Exall's statement to him was made the day after the latter got out of prison.

A singular argument is based on the following letter, in connection with the theory that the alleged

outrages and indignities were put upon Exall after his report of January 7:

Señor DON MIGUEL LARENGA:

DEAR SIR AND FRIEND: I have received your letter dated yesterday and that of Messrs. Storzel, Bartning & Co., and as I intended to come here I have deferred my answer until my arrival.

I am very sorry that Messrs. Storzel, Bartning & Co. misunderstood what I said to them respecting this matter, and have again troubled you with it. Within three or four days I hope to set out for Mazatlan, when I shall see those gentlemen, and I believe I can arrange the matter satisfactorily with them.

I am, your most affectionate servant,

CHARLES H. EXALL,
Administrator La Abra Silver Mining Company.

SAN DIMAS, *January 12, 1868.*

(Pp. 279, 280.)

It is said that as the letter bears date at San Dimas, January 12, 1868, therefore Exall must have been released from thraldom on the preceding day, the 11th! But why not the 8th, 9th, or 10th? The letter is worthless for any such purpose.

But the theory in support of which the letter is invoked is not even plausible in view of the testimony, which warrants the conclusion that Exall was released from restraint on January 7, on Granger's furnishing *security* for the payment of the fine of $50. Exall says (p. 31), "I was released through the personal influence of *a* Mr. Granger, who had to promise payment of the said fine." Granger says (p. 48), "By personal influences I brought to bear, and by *securing the payment* of the fine imposed upon him, I managed to get Mr. Exall released;" and

Cryder says (p. 69), "Mr. Granger managed, with some influences unknown to me, and *by securing the payment of the fine, to get Mr. Exall released*," etc. It is thus evident that it was the *securing* of the fine, and not its *payment*, that was the condition of Exall's release, and as the company's expense account (p. 743) shows that the fine was paid on January 8, and charged up as a "*prestamo*," we may fairly conclude that the release on security took place on the 7th of January and that the fine was actually paid on the following day.

It is furthermore extremely improbable that Exall's letter to Larenga would have been *wholly silent* as to the indignities and persecutions alleged to have been heaped on him, if he had just emerged from such treatment. But again, if Exall had been seized and thrown into a loathsome prison after his letter of January 7, which, it will be noted, appears to have been copied in the letter book *after* the letter of January 12 and therefore must have been a true history of the imprisonment up to that date, he would hardly have allowed that letter to stand as his only version of the "affair," but would have written a further account and put it also in the copy book. At the very least, he would have referred to the matter in his next letter to Treasurer Garth, dated January 24, 1868 (p. 281). And it is simply incredible that Exall should have been subjected to this so-called disgusting treatment for

several days and yet that Sundell and Torres, his friends, should have been ignorant of the fact.

It is true that Señor Zamacona states that Exall was imprisoned *four days*, but it must be recollected that he spoke *without the light of the new evidence.*

Exall, in his rebutting evidence, states that the passion exhibited by Perez was affected and "a pretext for locking me up and *paralyzing the works of the company*" (p. 155). But can it be that there was no report by Superintendent Exall to his company of so serious an interference with its business? There is no such report in the letter-press copy book, and *there could have been none at all*, as the first that Treasurer Garth knew of Exall's imprisonment was learned from him on his return to New York, in 1868, when he told Garth "*that he was imprisoned for about two weeks*" (p. 706).

Which, now, is the more probable theory? That the testimony about the pesthouse, the millions of fleas, and the hard sentence of the judge, is unworthy of belief, or that Exall, having suffered these things, forgot or neglected to mention them in his depositions, made no report of them to the company at New York, and even kept them from his friends, Sundell and Torres. Counsel opposite seem to forget that witnesses, to be believed, must not only swear, but *swear credibly.*

When the learned counsel opposite shall have re-

moved these difficulties from his path, it will be time enough to inquire why the Government of Mexico did not examine Judge Perez on the "affair" between him and Superintendent Exall. As matters now stand, speculations of that sort are a waste of time.

NO DENIAL OF PROTECTION AS FALSELY CLAIMED.

When it is considered that the claimant's case is built on the complaint that the Mexican Government denied it the protection of the law, it is simply amazing, *if the complaint is not a fabrication*, that so important a matter should be dismissed by Exall, in his deposition in chief, with this sweeping statement:

> I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither: and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. (P. 31.)

We are bound to presume that these repeated applications to the Mexican authorities for protection were made in writing and that the home office of the company in New York was kept duly apprised, in writing, of all such proceedings. Indeed, we think there can be no doubt that these applications for protection, *if made at all*, were made in a regular, formal way, because the company lays stress on the fact that it employed a distinguished Mexican lawyer, Jesus Chavarria, to attend to the business.

It was, therefore, little short of effrontery for the claimant to offer *a mere sweeping generality in support of the great fundamental contention in the case*, without the least effort to account for the absence of the documentary proof for which the case imperatively calls. Furthermore, there was no attempt to interrogate the lawyer, Chavarria, in such a way as to bring out the particulars of his alleged repeated solicitations for protection, as counsel for the company. (See Chavarria's dep., p. 83.)

In this state of things, may we not ask if the court should not presume that applications for protection were never made, or, *if made*, were not produced because they would show that the Mexican authorities did not disgrace their civilization by denying the protection sought.

In the face of the peremptory instruction repeatedly given by the company to Exall to stand up firmly for its rights and to meet any refusal of the authorities to respect them by formal protest, *as a basis for an appeal to our Government*, and of the fact that "an eminent Mexican lawyer" was retained by the company to lay the proper foundation for a claim against Mexico, the first written account of the so-called expulsion of the company *from any source whatever* is Exall's first deposition, subscribed and sworn to on December 2, 1869 (p. 30), *or one year and nine months subsequent to the pretended occurrences therein mentioned!*

This is the more remarkable when we recall that it was the practice of the company to make a record in its letter books of its communications with the authorities. This was done by Superintendent Bartholow when he resisted the excessive tax (p. 215), by his successor, De Lagñel, when he replied to Valdespino's application for a loan (p. 237), and by Exall whenever he applied for prorogues, and when he replied to Olvera's notice to produce the titles of the company (p. 274), and when he filed an opposition to Soto's denouncement of the hacienda Guadalupe (p. 278). Even Exall's letter excusing his failure to keep his agreement with the local officials on a certain occasion was copied in the letter book (p. 267), and so was his letter appealing to the Gefe at San Dimas in the matter of his arrest by Perez (p. 280).

Here, then, is a claim which started at $1,930,000, and in less than three months grew, like Jonah's gourd, to $3,000,030, and afterwards expanded to $3,962,000, and which rests on the charge that Mexico rejected the company's appeals for protection from violence and allowed the local authorities of San Dimas and Tayoltita to drive it from the country by brute force; and yet, incredible to relate, it is not dignified by the support of a single document, or, indeed, by any evidence, to show that it ever had such support.

When before, in the history of human affairs, was

presented the spectacle of a corporation urging through its Government an immense claim against another nation upon the flimsy basis of depositions taken long after the occurrences to which they relate—depositions stuffed with hearsay, wanting in specification, and unworthy of belief?

Exall, whose testimony is fullest on this head, is conceded to be perjured, and Marcos Mora, who was brought from jail, where he was held for official delinquency, to assist the governor of Durango in determining the action to be taken on a pretended appeal of the company for protection, are two of the witnesses vouched, and the third is "*the eminent Mexican lawyer, Jesus Chavarria,*" whom one would suppose fit to sit by Ulpian or Papinian, from the unmeasured deference which it has been found necessary to pay him in the brief below.

Chavarria, it may be observed, was introduced to Rice, who represented Exall, by Judge Barraza, but the latter is particular to say: "Without knowing what was the business for which he required the services of a lawyer in this city" [Durango]. (P. 92.)

In his argument before the Commission Judge Black evidently treated the testimony of Exall and Mora as unworthy of consideration, for he said: "This case can not be decided against the claimant without pronouncing *Chavarria* a perjured man." (Respondents' brief, Ct. Clms., p. 131.) Who, then,

is this pillar of appellant's case to whom obeisance is made by counsel opposite whenever his name is mentioned?

Experience teaches that it is safe to judge a man by the company he keeps. *Noscitur a sociis.* Let us now apply the principle to this man of law.

The record of the case before the Commission shows that Chavarria was on familiar terms with the Gefe Politico, Marcos Mora, and his successor, Macario Olvera, who were, according to appellant's theory, two knaves engaged successively in prostituting their official authority to accomplish the wicked intent of *driving the company from its property and appropriating it for the joint benefit of themselves and its discontented employés.* Indeed, Exall goes so far as to say that a few nights before his so-called "flight" an attack was made on the company's hacienda by some men, *headed by the Prefect Olvera,* and he thus describes the plottings of Olvera, Mora, and Soto:

> Said judge Guadalupe Soto, and the prefect, Marcos Mora, encouraged this spirit among the men, and *incited them to riot* by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently for weeks at a time, paralyzing the works, and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion, Aquilino Calderon attempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled, by said judge and prefect, to quit the company's service, and they, *the said Prefect*

Mora and Judge Soto infused the same hostile feeling into the whole mass of workmen, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men, and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders *were mild compared with verbal orders given me by said officials, from time to time, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable.* The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters continued to harass the company in its operations, *and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer.* They were armed with pistols and machetes but as I had been previously warned of it by said friendly muleteer, *I was in some measure prepared for the attack*, and after they discovered my position and strength, they retired for that night. *Soto and Olvera* both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, *that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their verbal orders to me were much more pointed, emphatic, and hostile than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing. (Pp. 153, 154.)

It also appears in evidence that this man Olvera was killed in a "disgraceful emeute" in the streets of San Dimas in the summer of 1870. (Pp. 73, 82.)

Turning now to the deposition of the "*eminent Mexican lawyer, Jesus Chavarria*," we find that in July or August, 1867, he visited the Abra mines, in

company with Marcos Mora; that he became satisfied from conversation with Mora that both he and the mining people were bent on annoying and driving the Abra company away; that Mora and some of the miners stated that the company were "annexationists," and therefore "hateful to Mexico;" that it was thought best "to drive it away from that mineral anyhow;" that Mora also gave him to understand "that *he* [Mora] *had especial interest in the expulsion and despoliation of the company, in which case he intended to denounce the mines at Tayoltita*, and HE OFFERED DEPONENT A SHARE IN THEM, WHICH DEPONENT REFUSED, and reproved his conduct in permitting the operatives to steal the ores," etc. (P. 81.) Further on (p. 83) he gives an *affirmative* answer to this question:

> **Nineteenth. State whether it is true, or not, that in a conversation with Marcos Mora, the gefe politico, at Tayoltita, in July or August of 1867, *that the gefe politico admitted to him that he had made money during the time he was acting as gefe politico, by dividing the profits on the ores stolen from the Abra Silver Mining Company*, and *which were reduced by the native miners at the small reducing works belonging to Mexicans in the vicinity of Tayoltita?* State, also, whether the said Mora made any statements to this effect, or *had the temerity to invite witness to participate in that unlawful undertaking.***

And, in reply to the eighteenth question, he said that before Marcos Mora became Gefe Politico, in February or March, 1867, he was poor, and, speaking of his own knowledge, that "shortly before he [Mora] was committed to prison for the crime before

referred to" he "opened a store and, shortly after, a pawnbroker's shop."

In a previous answer the witness said:

> That it is a fact, that Mora was tried *for misconduct in office;* that he was *imprisoned and tried in this city,* before the second criminal judge; that Mora was *further accused of malversion of the public funds, and that deponent was the lawyer who defended said Mora.* (P. 81.)

What attracted these two men, Chavarria and Mora, to that forlorn mountain hamlet, Tayoltita, and the neighboring mines is unexplained, unless we accept Mora's improbable, not to say *incredible*, statement that they went there "*from curiosity and for amusement.*" (P. 89.)

However, the "*eminent Mexican lawyer*" having satisfied his curiosity and been sufficiently amused, no doubt, retraced his steps, and on the road from San Dimas to Gavilanes fell in with Macario Olvera, and the two were soon deep in talk upon the absorbing theme of Mora and the plot to expel the Abra Company from its mines and works. Here is Chavarria's account of the conversation in reply to the tenth question:

> That he met Macario Olvera on the road, from San Dimas to Gavilanes; that they conversed together upon the subject referred to in the question, *and Olvera acknowledged to him the plans and intentions existing at Tayoltita, on the part of the authorities and the operatives, to injure and expel the Abra Company from their mines by intrigues, or such direct and indirect means as it would be impossible for them to resist, and that Olvera revealed to deponent that he was interested in that hostility, and in combination with the gefe politico, whom he was going to replace, to carry out the sinister projects before referred to.* (P. 82.)

The twentieth question and its answer we give in the very words:

> **Twentieth.** State whether the gefe politico, Marcario Olvera, Marcos Mora's successor, made any admissions or boasts, in witness' presence or hearing, to the effect that he had made money out of the "gringos" *by the sale of the ores belonging to the Abra Silver Mining Company, or from the sale of their tools, or pieces of their machinery, or any of the other implements belonging to the said company.* State, also, what he heard said, by any credible persons, concerning the sale and destruction of the company's property at Tayoltita; also, *what was the general reputation of the gefe politico, Olvera, and also that of Mora, as to their honesty in their official capacity,* during the time they were acting as gefes politico in that district, *in the years 1867, 1868, and 1869?*
>
> **Answer.** That the matter referred to in the question *is true;* that he was informed by credible parties at San Dimas that the said Olvera was engaged in the speculations, as stated in the question, *and that neither his nor Mora's reputation was good in the years mentioned in the question.* (P. 83.)

Turning now to the deposition of Marcos Mora, we find that he does not hesitate to characterize as "*false*," or "*wholly false*," several matters imputed to him by the "*eminent*" Chavarria (pp. 89, 90), from which it is very evident that he was not in the habit of approaching Chavarria cap in hand. Nor was it to be expected that he would be, for the quotations above given from Chavarria's own deposition make it perfectly clear that he is quite as much of a knave as Mora or Olvera are represented to be. What other estimate can be placed on a man to whom Mora and Olvera, branded by him as persons of bad repute (p. 83), were not afraid to unbosom their nefarious schemes for the expulsion of the company and the appropriation of its mines

and works? Mora and Olvera knew their man, for there is not a particle of evidence to show that Chavarria communicated the plot to the company, or took any step whatever to bring the guilty officials to justice. He should have been questioned by the claimant on those points, but was not.

Surely no high-sounding praise can attract the respect of the court to this fellow, who has disgraced the profession to which he belongs.

After this insight into Chavarria's character, we are not at all surprised to find that his testimony on the point of the company's so-called appeals to the Mexican authorities is precisely such as might be expected from the lips of a corrupt witness. All that he says about the "*innumerable steps and measures*" taken in the company's behalf for protection is covered by the following question and answer:

> Fifteenth. State whether the protection of the national and State authorities was *duly and legally* invoked on behalf of the Abra Silver Mining Company, at the end of 1867, to protect it against the unlawful attempts made against it and the robbery of its property by Mexicans at the instigation of the gefe politico of the district and the local authorities at Tayoltita? If this be so, then state how you learned the facts? Who was employed by the company as its agent, to represent the facts to the authorities? Who was employed and acted as the company's attorney at the time the said protection was invoked? State what was told him, and what was done in his presence by the national and State authorities when the said protection was asked for, and in reply to his petition?
>
> Answer. That the matter stated in this question is true in all its parts; that deponent, employed by Mr. Rice, of California, as Exall's lawyer, *repeatedly solicited, from the State government, protection for the Abra Company, to suppress the robberies and*

outrages which the company were experiencing at Tayoltita, but all to no purpose, as, after innumerable steps and measures, the executive of the State never even so much as requested the authorities at San Dimas to comply with their duties. The only answer given was, that the government of the State, at whose head was Francisco Ortez de Zarate, in 1867, would not meddle in private matters. (Pp. 82, 83.)

Here we perceive that generality of statement, commented upon above, under which fraud and perjury usually take shelter. Indeed, the avoidance of specification in this instance is so remarkable that we find much less difficulty in reaching the conclusion that Chavarria is perjured than in believing that he would have omitted to furnish some, at least, of the particulars of his repeated applications for protection in behalf of the company, or provide it with the documentary evidence necessary to support an application for the intervention of this Government, if he had, in fact, made any such appeals for protection.

The ignorance and bungling displayed by Chavarria in conducting that imaginary business are well commented upon by Señor Avila in support of his application to the umpire to rehear the Abra case. He said:

The least that could be expected of him [Chavarria] is that he should have known the fundamental law of his own country and the manner it has established to enforce the rights it guarantees. This instrument in its eighth article declares inviolable the right of petition respectfully exercised by writing, and that to every petition there shall be a corresponding resolution which shall be communicated to the party interested.

This first-rate lawyer ought then to have started by presenting in writing his application for protection to the governor. If he

did so, but the resolution was not communicated to him in writing, he ought to have resorted to the corresponding remedy, which he would have found in article 101 of the constitution, and in the writ called "*amparo*." If the district judge paid no attention to his complaint, he should have applied to the circuit court; and if even there it was disregarded he should have appealed to the supreme court of the nation. *It would have been absolutely impossible that in all these efforts he should have failed to get some documentary evidence to present.*

Without some document of the kind no court can believe upon his word a lawyer pretending to have done all he could and ought to have done in the interest of his client, *nor will common sense recognize him as an intelligent lawyer.*

(Ex. Doc. No. 103, H. R., Forty-eighth Congress, first session, p. 94.)

This is the *coup de grace*, fittingly administered, too, by a Mexican lawyer who has a proper sense of the dignity and responsibilities of his profession.

So long as the record in this case stands, it is in vain to parade what Judge Barraza or anybody else says about Chavarria's "*dignity and well-known integrity.*" A man who consorts with knaves, as Chavarria did, can not be far from being one himself.

EXALL'S TESTIMONY FURTHER CONSIDERED.

We now call attention to the character of the testimony the witness Exall gives in support of the claimant's large item for mule trains and supplies alleged to have been seized by "the military authorities of the Liberal Government of Mexico, a matter to be more fully treated later." He says:

The military authorities of the Liberal Government of Mexico, or those acting in that capacity, seized upon our mule trains on the road from Mazatlan to our mines in the State of Durango, loaded down with provisions and stores for the use of the employees of said company, and they, the military, appropriated

them to their own use, upon the plea that they were not provided for, and must have them as a military necessity.

Large numbers of our mules, and thousands of dollars worth of our stores and provisions, were captured in this way by the said military, during the progress of the war there. (P. 31.)

It will be observed that these pretended seizures are represented to have been made to meet overruling public necessities. They were an irregular exercise of the right of eminent domain, if they took place at all.

But where are the vouchers or *receipts* for the property taken? Certainly those who were enforcing the supreme law of the public safety can not be presumed to have seized the company's trains and supplies like highway robbers, without any intention of rendering payment. Surely the receipts given must have been sent to the company's home office in New York, with full reports from the respective superintendents. *There is, however, absolute silence on this head!* But that silence *speaks volumes!*

But, again, claimant examined Don Antonio de la Peña, who was the principal of the wholesale grocery and provision house of Peña & Co., of Mazatlan, which "supplied the company with provisions and other articles for their mining operations at Tayoltita" during Exall's time (p. 102), and Don Pedro Echeguren (p. 103), the senior member of the banking house and commercial establishment of Echeguren, Hermanos & Co., of Mazatlan, which

also furnished supplies to and did business with La Abra Company, in Bartholow's time, to the amount of over $100,000, and yet neither of these witnesses was asked if he could give any information, from his books or otherwise, as to supplies lost by seizure on their way from Mazatlan to Tayoltita. This is the more noticeable, because the witness Echeguren was very particularly examined as to the practice in Mexico of exacting "prestamos," or forced loans, to supply the public exigencies, from which it would have been an easy and natural transition to the alleged seizures of mule trains and supplies.

But the importance of showing that the seizures were the work of the *Liberal forces*, and not of the Imperialists, seems to have *stimulated Exall's reminiscent faculty*, for he deposes, with positiveness, that "the captures or robberies of our mules and stores" were "*principally by the Liberal* forces." (P. 32.) In the nature of things, he, *at the mines*, could have had no personal knowledge of the facts, and must have sworn recklessly. That he was not a witness of any such seizure is morally certain, or he would have said so.

The claimant has not scrupled to introduce hearsay freely into the case, yet the opportunity of eliciting from the witnesses Peña and Echeguren the story Exall must have told them when he reached Mazatlan in flight for his life, as he says, from the mines, was allowed to pass wholly unimproved! If

the account so given, *recenti facto*, had agreed with his testimony, can there be a doubt that both these witnesses would have been examined on the point for the purpose of corroborating the discredited Exall? And we are strongly inclined to think that the evidence would have been admissible to support the witness's extraordinary and improbable story.

It adds to the probability that Exall gave a full account of his *flight* to his friends, Peña and Echeguren, especially the former, from whom he borrowed $250 to pay his expenses to New York, that they were not Mexicans, but *Spanish subjects*, to whom he could talk freely. Indeed, the deposition of the latter shows that he had anything but a friendly feeling toward Mexico. (P. 105.)

But, however that may be, Exall must have poured his troubles into more than one friendly ear on reaching Mazatlan, after his so-called expulsion from the mines, and it is difficult to see why those who heard his "dismal treatise" were not examined. The failure of claimant, which did not hesitate to bring into the case any sort of evidence deemed helpful, to adduce such testimony seriously discredits Exall, and, with him, the case whose main stay he is.

Exall's statement that he was afraid to return to the mines any more we shall show to be false from his own letters farther on. He says, in connection with the so-called fact that he advised the company

to give up the enterprise, absolutely, that he understood "that said company was so advised *by others, who were citizens of Mexico*" (p. 32), but *strangely enough*, no clue is furnished *to those "citizens of Mexico."* How baffling such testimony must have been to Mexico, in preparing her defense! How discrediting to its case that claimant does not so much as offer an excuse for not examining those "citizens of Mexico!"

EXALL AND OTHERS ON THE VALUE OF THE MINES.

The simple answer to what Exall says about the comparative richness and the productiveness of La Abra's mines is, we repeat, that the conduct of the company *in abandoning its property rights* in the mines as well as its possession, and *preferring the uncertainty of a litigated claim for damages to such rich possessions*, is utterly at war with Exall's statements. It is sheer idiocy to say that this company, with a powerful Government like the United States to back it, would have tamely submitted to be despoiled of this bonanza, which, if it dared not operate, it could not at least have been afraid to sell.

But Exall's opinion as to silver mines was of no value whatever. He was both incompetent and uneducated as a mining engineer, as will be shown satisfactorily at a later stage of the argument. At present we will do no more than point to the fact that in his deposition in chief, given in 1869, he

describes himself as having the "*occupation of a merchant*" (p. 30), and in his deposition in rebuttal, given in 1874, as "cashier of the stockbrokers' establishment and banking house of Washburne & Thayer," of New York (p. 149), and that in neither does he refer to the fact that his regular calling was that of mining engineer. This, of itself, shows that he was no professional engineer, for a man's profession is too much a part of himself to be ignored or laid aside in that way, like a garment out of fashion. We may, indeed, be sure that if this witness had been a regular mining engineer the claimant *would have taken care to have it so stated in the two depositions.*

Besides Exall, other witnesses were introduced to testify in a similar strain of exaggeration as to the value and richness of the mines La Abra had been working, some of whom have referred to the books of scientists and explorers in supposed confirmation of their testimony, but it is a damaging circumstance that claimant did not, *instead of exploring into books for information*, examine on this subject two important witnesses—I mean the men from whom the mines in question were purchased, namely, Don Juan Castillo del Valle and Don Ygnacio Manjarrez. This is the more remarkable because the claimant did examine Del Valle as to the sale of the mines to the company and the passing of the deeds and purchase money between the parties, and then, at another time, examined him as to other mat-

ters. How, then, is the failure to examine Del Valle and Manjarrez with regard to the productive capacity of the mines to be accounted for, except on the theory that claimant had a purpose in avoiding the best sources of information; in other words, did not dare to evoke the truth from those who, by actual experience, knew more about the mines than Humboldt, or Ward, or the world besides.

The presumption against the claimant from this effort to suppress the truth is intensified, if anything, by the base artifice afterwards employed for the purpose of forestalling this inevitable presumption.

In rebuttal, and *after Mexico's case was closed, and all danger of contradiction and exposure was passed,* to wit, on June 22, 1874, it was sought to supply the wanting testimony of Del Valle and Manjarrez *through the lips of Thomas J. Bartholow*, who, on being asked:

> What exhibits were made to you, if any, by the former owners of said mines, Ygnacio Manjarrez and Don Juan Castillo del Valle, with reference to the value of said mines, the richness and abundance of their ores, and the profits with which they were worked by them, previously to the sale or transfer of the same by them to yourself and D. J. Garth, as agents for said Abra Company?

Answered, as follows:

> The parties named in the question, Ygnacio Manjarrez and Don Juan Castillo del Valle, represented to the said Garth and myself, both before and after the purchase of said mines and property, that the said mines El Rosario, El Cristo, La Luz, and its appurtenances, El Arayan, with Talpa and El Sanz

among its appurtenances, were among the most valuable of all the mines of Durango and Sinaloa, and they, said Manjarrez and del Valle, produced and exhibited to said Garth and myself their books, in which was written down and stated, with particularity, the profits with which they had worked said mines for a number of years preceding said sale, showing that the ore from said mines, which they had reduced, averaged them from 6 to 10 marks per carga of pure silver, with an addition of about 10 per cent of gold; and they represented to said Garth and myself, at the same time, that if said mines were worked on a larger scale, and with improved machinery, (such as we then contemplated erecting, and subsequently did erect on said premises), then that they would produce much larger profits, and they stated that the metals which had reduced from said El Rosario mine had yielded them an average profit of 11 marks, or $100 per carga of 300 pounds, in pure silver, with an addition of 10 per cent of gold; and during our examination of said mines, and immediately before we made said purchase, they blasted and took out an average lot of ores from said La Luz mine, and reduced the same in the presence of said Garth and myself, as tests of the value of said mine and its ores, and the same yielded, of pure silver, 6 marks per carga of 300 pounds, and they represented the veins of ore in said mines as being inexhaustible in supply; which, from my subsequent examination, I believe to be true. (P. 173.)

This effort to get before the commission these hearsay statements, falsely attributed to Del Valle and Manjarrez, as we firmly believe, and at the same time, *by indirection*, break the force of the testimony given by them in Mexico's behalf, deserves severe animadversion, and bears on its face the stamp of fraud.

If Del Valle and Manjarrez had made any such representations as to the yield of the mines as Bartholow says they did, we may be sure Garth would have stated them also; but he says nothing on the subject, *nor was he questioned about it.* This is sufficient to show the falsity of Bartholow's testimony, if

anything more was needed for that purpose. This witness, having studied over all the testimony that Mexico had filed, came up as a sort of *corps de réserve*, and furnished such additional testimony in rebuttal as the claimant's case seemed to require, as, for example, by swearing to the deliberate untruth that La Abra's superintendents "were qualified for their positions, *both by a knowledge of the science and practice of such mining operations*," the testimony on the part of Mexico, supported by the appellant's witness, Garth, being strong to the point that it was ignorance and incompetency that caused La Abra's failure, and not violence and persecution.

It is, indeed, a reflection on the company's case that both Del Valle and Manjarrez were not called and examined in this suit as to the representations they made to Bartholow and Garth touching the yield of the mines when the negotiations for their purchase were going on. It was most unfair to attempt to discredit covertly these men without affording them an opportunity to deny or explain the statements put into their mouths by Bartholow.

It is significant, too, that while Bartholow attacks and accuses of false swearing other witnesses produced by Mexico, he does not even suggest anything of the kind with reference to Del Valle or Manjarrez in his stealthy attempt to undermine their credit.

Now, let us compare the sober disinterested state-

ments of these former proprietors of the mines with the unscrupulous exaggerations of Exall and other witnesses.

Del Valle says (p. 139):

> That the business formerly established by the respondent produced from 80 to 100 cargas, and at some time as high as 200 cargas a month, *but that it never was a business productive of large gains*, and only yielded enough to enable the mines to be kept *in such condition as to make them salable to him;* that in regard to what is contained in the remainder of the interrogatory, he has heard various stories, generally unfavorable to the reputation of the Americans who purchased the mines, but that he knows nothing in regard to them of his own personal experience, for the reason that he did not return to Tayoltita, and for other different causes.

This witness had no motive to testify falsely, and certainly his second deposition (p. 78), which may be more particularly referred to further on, shows him to be outspoken and not afraid to tell the truth, disagreeable though it might be to those around him.

Manjarrez deposes (pp. 111 and 141):

> That he has been acquainted with the mineral district of Tayoltita for fifteen years; that in the year 1854, he and his partner, D. Juan Castillo de Valle, became the owners of the first mentioned of the mines that have been named over to him, and that during all the time that said mines were worked by them they produced *good profits up to the year 1865;* that they sold the mines and haciendas to an American company called the "Abra." (P. 111.)
>
> That it is true that this enterprise produced monthly from eighty to an hundred cargas of ore—all rubbish; that in ten years that the deponent and Castillo worked, *they never made more than enough to economically carry on the works which they had begun;* that in his judgment he believes that the Americans speculated upon the credulity of those who constituted the company in the United States, by representing to them that the acquisition of said property was of great importance, when in

reality it was only limited as regards its productiveness, as he has stated. (P. 141.)

The fact that Del Valle and Manjarrez sold these mines for $50,000 was, it would seem, full notice to the purchasers that they were not buying a bonanza.

EXALL IN REBUTTAL.

Returning now to the claimant's chief witness, Charles H. Exall, we desire to call the attention of the court to his deposition, given in rebuttal, on June 11, 1874 (p. 149), four years and six months after the date of his deposition in chief, given on December 2, 1869 (p. 30). Like Bartholow's, this deposition was made after the case of Mexico was closed, and when there was no fear of contradiction or exposure by additional evidence on the part of Mexico, and, furthermore, after the witness had studied over all the defensive evidence." (P. 150.)

He now attempts to go into details. He mentions Judge Guadalupe Soto, and the prefect, Marcos Mora, and the prefect, Macario Olvera, as in league with the turbulent, discontented populace clamoring for work, and as inciting them to acts of hostility against the company. Indeed, he goes so far as to make the incredible statement that only a few nights before his escape an attack was made on the company's hacienda by some men *headed by the Prefect Olvera.* (P. 154.)

The miners and the authorities being thus bent

on driving the company from the mines and turning them over to the natives, who were clamoring for work, the situation became so alarming, as Exall says, that he fled for his life with precipitancy.

His very words are:

> Only the day before I escaped, I was warned by the prefect, Macario Olvera, in person, that it would be better for me to abandon said works, and leave the country before any personal harm came to me, as he could not protect the company, he said, against public sentiment, *as the native residents of that district were determined not to remain without work any longer, but to take the mines and work them on their own account.* (P. 152.)

Again, he says:

> Soto and Olvera both told me that unless I employed all the men who were out of work in that district, which they knew was utterly impossible, *that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their verbal orders to me were much more pointed, emphatic, and hostile, than anything they wrote me. They were working openly and covertly to get us out, and to escape as much of the responsibility as possible for so doing. (P. 154.)

Exall having fled, the question at once suggests itself, Did the howling mob seize the mines and go to work? Why, no! James Granger, Exall's intimate friend and successor, remained in full possession, unmolested, and at his leisure despoiled the mines of pretty much all the movable property he could sell or otherwise make use of. But who diverted the mob from their fell purpose? By what spell or sorcery did Granger keep this infuriated rabble from executing their lawless plan, hatched under the auspices of the local authorities themselves? If Exall tells the truth, there was nothing

to prevent the rabble from taking possession of the company's mines and haciendas, led as they were *by the local authorities.* But Exall did not tell the truth, and so we hear nothing of the mob after he left the scene. How easy it would have been to prove by Granger that the mob took possession. But his depositions show nothing of the kind. Indeed, in one of them he says, "Afterwards, when the superintendent, Carlos H. Exall, left, *I remained in charge as his representative*" (p. 129), and it appears by Soto's deposition that on August 7, 1868, *five months* after Exall's pretended expulsion and flight, James Granger, acting for the company, extended for a further term of seven months an agreement made between Exall and Soto by which the latter was licensed to occupy certain mining works (beneficio de metales) belonging to La Abra Company (p. 132), which shows that Granger was still in possession of the company's property.

Exall speaks of leaving the mines "hurriedly and secretly, *with my American friends*, to save my life." (P. 152.) A little further on he remarks, "*My American employees and myself* were in immediate danger." Again, on page 155, he says that he and his "*American employés*" and his "*servant*" made their escape to Mazatlan. But why were not the names of these people given, and, above all, why were they not given in Exall's deposition in chief? Why were these people not examined as witnesses?

What an opportunity to remove some of the discredit under which the claimant's case labors!

The omission to name these individuals, the omission to make witnesses of them, without excuse or explanation, was not only a serious embarrassment to Mexico, but *puts the stamp of fraud on the claimant's case*, for it is *incredible* that men should have acted with such fatuity in an honest case where so much was at stake, unless the inadmissible position be taken that, in deciding this controversy, the court may proceed on the theory that the claimant and its agents have acted without regard to the laws of human conduct by which judges are *necessarily* guided in passing on the motives of their fellow-men.

In his deposition in chief, Exall, as we have seen, contents himself with the following unsatisfactory reference to his efforts to secure protection from the Mexican authorities:

> I had frequently applied to the proper military and civil authorities of Mexico, both in Sinaloa and Durango, for redress and protection against the violence stated, but was rudely denied by both in every case, and could get neither; and these threatened acts, and the acts of violence, were encouraged and connived at by said authorities, if not actually instigated by them, which last I believe to be the fact also. (P. 31.)

The contrast between this statement—purposely made general to embarrass Mexico in preparing her defense, as must be inferred—and the detailed evidence on the same subject in Exall's deposition in rebuttal (pp. 158, 159), which was *secure from expo-*

sure by contradictory testimony on the part of the defense, reflects serious discredit on the claimant's case.

It is equally discreditable, we can not too often repeat, that the claimant has not produced a single document to establish this wretched and grossly improbable story that the Mexican authorities denied protection to the company's property.

We ask leave to repeat that we can not believe that the men of business representing this company in such grave negotiations with the local authorities, or that its legal adviser, would have been so inattentive to the interests under their charge as to omit to send to the home office of the company in New York full documentary evidence of everything connected with the rejection of their appeals for protection.

The failure to produce such documentary evidence, or offer any excuse for its absence, raises a strong presumption of fraud. Indeed, it was not far from an affront to the intelligence of the commission to lay the inferior evidence before it without a word of explanation, especially when coupled with the transparent plan to embarrass Mexico by withholding the details of those most improbable proceedings between the company and those in authority in the States of Durango and Sinaloa.

Nothing short of the most satisfactory evidence should suffice to convict the authorities of Mexico of the savagery charged in the claimant's memorial,

and the absence of that character of evidence, so naturally looked for, is conclusive that the imputation against Mexico is a fabrication.

Up to this point we have given much attention to the testimony of Exall. The intimate official relations between the company and this witness, as superintendent from April, 1867, until he left the mines in March, 1868, and his personal knowledge of the facts connected with the company's so-called expulsion from the mines, seemed to make it desirable, in point of directness and perspicuity, to open the discussion of the facts on the lines of his testimony.

The case, as thus developed, shows much disingenuousness and suspicious reticence on the part of Exall, and such a lack of disposition on the claimant's side to correct it by a proper mode of interrogation, where it would have been to the evident advantage of the claimant to do so if the witness was truthful, that the inference, harsh as it is, seems inevitable that *both claimant and witness were involved in a conspiracy to impose a fraudulent claim on the commission.*

The argument might rest here, and a decree for the United States might be asked for with no little confidence, on the simple ground that the claimant's case is *incredible*, when judged by the laws that govern human conduct—the only test, we repeat,

which courts of justice can apply to evidence involving motive.

So long, then, as tribunals of justice refuse to enter the domain of the miraculous, such a case as that presented before the commission by La Abra transcends proof by any amount of legal evidence.

But useless and unavailing as all the claimant's evidence must be from that point of view, the magnitude of the cause forbids us to pass by such of it as has not yet been noticed.

EXALL THE TYPE OF THE OTHER WITNESSES BEFORE THE COMMISSION.

In much of this testimony we shall see not only a repetition of Exall's dismal story, but a frequent recurrence of that witness's devious and discrediting methods, while the trail of the conspiracy will be everywhere visible.

It would, however, be a waste of time to notice this testimony with much particularity, in view of the consideration that all testimony which professes to support the charges on which the memorial is based has been shown to be incredible, and therefore false, by the conduct of La Abra Company and its trusted representative and agent, Exall. It can be more readily believed that any number of witnesses, of whatever credit, are false or mistaken, in a particular case, than that the laws ordained for

the government of the moral world have been miraculously suspended.

The witness Alfred A. Green presents himself under the bias of a claim before the commission against Mexico for $330,938.71, to which, however, he makes no reference, and which was afterwards dismissed.

His deposition is a connected narrative, an affidavit, in other words, and may be, and probably is, in the language of some third person who prepared it; for, as will appear farther on, the manner in which claimant's testimony was gotten up is marked by irregularities which are destructive of its credit.

Green, like Exall and the other witnesses who support the claim, testifies largely with the suspicious generality of fraud.

He says, for example:

> On several occasions, in January, February, and March, 1868, in San Dimas district, I have heard Mexican citizens and authorities say that they meant to drive out and kill off all the Americans, and get their mines and property.
>
> This feeling of hatred and hostility was shared by the military authorities and soldiery, and by the local civil authorities, and was encouraged by them. It grew in intensity and boldness until it culminated in open violence and forcible dispossession of La Abra *and other companies. Several other American companies, besides La Abra, were driven off in a similar way.* (P. 36.)

But why were not these "several other American companies, besides La Abra," named, that Mexico might have an opportunity to test the verity of the evidence? And why were not the "Mexican citizens and authorities" named who made the savage threats

against "all the Americans?" The witness gave his testimony in the city of New York, and could have furnished such particulars without personal risk.

He also states that La Abra "was finally driven off and compelled to abandon its mines, ores, and property *by the acts of the authorities of Mexico*" (p. 35), and there stops short, and what is more, *is allowed by claimant to withhold the details on which his statement rests.*

He says he applied in vain to the authorities for redress in his own case, but, like Exall, gives no particulars, not even the names of the officials before whom he went. It was most improper to put in such evidence when the witness *admits* that he had "*official and unofficial*" papers elsewhere (p. 37), and, at the same time, complains of an imperfect memory. These papers should have been obtained. It was simply trifling with the commission not to have them produced; and the inference is that their existence was a mere pretense, or if not, that their production would have been hurtful to the claimant.

As was to be expected, this witness indulges in the usual hyperbole about the productiveness of claimant's mines.

Enough, certainly, has been said to show that this deposition is entitled to no weight. The presentation of such evidence raises a violent presumption of fraud.

The deposition of William Henry Smith (pp. 40–43) is unworthy of consideration for several reasons. This witness was engaged in mining in full view of the Abra mines, and, although *conveniently absent* when Exall's so-called expulsion took place, pretends to have knowledge of the outrages said to have been practiced on La Abra from time to time, *yet does not give, nor was he asked to give, a single instance of them.* We submit that these generalities, which do not admit of identification, should not be allowed the weight of a feather against the Government of Mexico.

As if to baffle any attempt to test his evidence, he is permitted to say he was half owner of the Tecolota mine without being asked to name the owner of the other half, which is the more suspicious because the witness tells us "*he was not exactly driven*" from his mine, but left because he felt that his life "was insecure there," the hostility to Americans being so intense. But he does not appear to have made any protest or urged any claim for indemnity against Mexico.

The witness claims to know of other companies and of individuals who received the same treatment as La Abra did, *yet claimant did not ask him to name a single one!*

Can appellant object, then, if the court should conclude that this witness, Smith, was only an unfortunate mining adventurer, who, like La Abra,

was driven from his property by *failure and hard necessity*, and also, like La Abra, was *glad enough* to be rid of a profitless investment?

We hear nothing of his coproprietor of the mine, and consequently may conclude that he remained there unmolested, or we should have had evidence on the point.

It was this same Smith who went to New York as agent to sell Del Valle's mines, and whose highly imaginative presentation of the Tayoltita property turned the eyes of New York capitalists eagerly in that direction. This alone is enough to sap his credit.

The next actor in this drama of fraud that claims our attention is George C. Bissell. His deposition (pp. 44, 45) is stuffed with hearsay, and although he lived on the spot he was *absent* when Exall's so-called expulsion occurred. But the only piece of this hearsay that would have been admissible, namely, the particulars of Exall's statement to witness of what occurred on his expulsion from the mines, is *withheld*. What the witness says in that regard is merely this:

> I know Charles H. Exall, said superintendent of La Abra Company, *very well and intimately, and have heard from said Exall his statement as to his expulsion from said company's mines, and I believe the same to be true in every particular*, from the character of said Exall as a gentleman of truth, and also corroborative statements *from others* in that district, at and since the time, as aforesaid, and from *other facts* known to this deponent. (P. 45.)

Could anything be more damaging to the claimant's case than withholding the details on which that most important statement is based? The inference from this undoubted suppression is that such details would have *contradicted* Exall's testimony. But what an opportunity this was to support the tottering Exall by showing that his extra-judicial account of his "expulsion" tallied with his testimony! That the opportunity was not improved, *speaks volumes.*

This witness, therefore, gives an involuntary but powerful support to the case of Mexico.

The trail of the conspiracy is too plainly evident in this deposition to require further comment.

We now come to the deposition of James Granger, sometimes called Santiago Granger (p. 46). This witness was assistant superintendent of the mines under Exall, and, he says, was put in charge of them by Exall when he left there. He testifies remarkably as to the causes that led to the abandonment of the mines. He says:

> The said La Abra Silver Mining Company abandoned their mines, hacienda, stamp mill, and reduction works, in March, 1868. I do not recollect the exact day, and they were forced to abandon said mines, and works, from the interference, hindrances, annoyances, and obstructions they had met with in the prosecution of their mining operations, both in the getting up of the machinery and supplies, on the road, by the military of the Republic, and from the various local authorities, which were such as must have convinced them that they never would be able to carry on their mining operations, with any chance of success. I shall proceed to state *on what facts I found this statement.* (P. 47.)

The witness then proceeds to speak of a number

of occurrences as the premises from which he reached the conclusion that the company was driven from its property, but as he was on the spot when Exall and his *unnamed* American friends and his *unnamed* servant fled for their lives, as alleged, had we not a right to expect from him some account of the crowning act of violence that drove Exall away in headlong flight, leaving him no time to make arrangements for the preservation of the company's property? It will not do for counsel to point to any particular matter in the deposition and say it was such act, *for the witness has not identified anything as that culminating act*, which, we repeat, is remarkable. It at once arouses suspicion to find that so important a fact is left to *inference*.

This witness gave *six depositions*, some on one side and some on the other. In his fourth deposition (p. 119) he says "*that he is not aware that the company abandoned the works on account of the illegal acts of the Mexican authorities.*" To this we add the following extract from his third deposition (p. 112):

> Upon being asked whether he knows that American citizens in the district of San Dimas have not been looked on unfavorably, or that they have been persecuted or threatened with assassination, but whether, on the contrary, they have not been highly esteemed by the people of the country on account of their unselfishness in carrying forward the profitable enterprises that they are in the habit of undertaking among themselves?
>
> He answered and said: That he knows the same to be true.

Even in his first deposition, hostile as it is to Mexico, the witness states an instance of a success-

ful appeal by the company to the justice of the country. He tries, however, to belittle and weaken the force of the circumstance, which only serves to show his intense prejudice. We take the following from the deposition:

> Question No. 15. Did said Guadalupe Soto have a lawsuit with La Abra Silver Mining Company, about the title to property in that district?
>
> Answer. Yes. It was about the "Lower Hacienda," as it was called, which was a part of La Abra property, the same having been denounced by said Soto, as abandoned, while the company was still at Tayoltita, carrying on their mining operations through Superintendent Exall. This, I think, was about January, 1868, or a couple of months before they were compelled to leave. The case was tried at San Dimas, and although it was a case not requiring much knowledge of the law to determine, still the company could get no decision in San Dimas, but the papers were sent up to Durango, the capital, and, as I understand, decided in favor of the company, *but it was a matter of little consequence to the company, as they were soon after driven away and compelled to leave there altogether.* (P. 50.)

In dismissing this witness for the present as entitled to no weight, saving perhaps as to matters otherwise established, we would repeat that he does not say that the mob that *drove* Exall away took the mines and went to work on their own account. Exall's men in buckram seem to have been suddenly and unaccountably diverted from their purpose. Granger remained *unmolested*, and plundered the company without let or hindrance, but did not share the spoils with the howling mob

Matias Avalos gave a deposition for claimant (p. 51), which he subsequently recanted by a deposition

for Mexico (p. 131), and then afterwards repudiated his recantation as supposititious. (P. 93).

When we come to consider the evidences of fraud and irregularity in the preparation of claimant's testimony to be laid before the commission, we think it will appear more probable that the deposition of this witness, given at the instance of Mexico, is his real deposition. Indeed, it bears internal evidence of being such.

But, taking his first deposition as his true one, it does not contribute much support to claimant's case.

The witness says that in the latter part of 1866 an armed mob charged on the company's hacienda, but were frightened off by the preparation made to receive them, and so no harm was done; and that in July, 1867, there was trouble between the company and the authorities, growing out of the company's failure to employ more operatives by working all its mines. But the witness *does not know how that difficulty was settled, although he was an employé of the company.* Certainly, then, these were not the occurrences that drove Exall headlong out of the country.

That the attack on the hacienda occurred in a region so little curbed by law as the district of San Dimas is not to be marveled at, but that it was met with a demonstration that intimidated the assailants is much to be wondered at, if the company was

existing there at the mercy of hostile officials and a hostile population, as Exall would have us believe.

As to the difficulty about the employment of laborers, it will be shown further on that the trouble was, in all probability, brought on by the company's willful disregard of the mining laws of the country.

It may be said at this point that the evidence of this witness and others to show the vaporing talk and threats of inferior Mexican magistrates has little, if any, tendency to prove a state of things that rendered it impossible for La Abra to carry on mining operations. Such bluster, especially from so low a class of men as they are shown to be, is never understood to mean harm. Hence the adage, *threatened men live long.*

The witness John Cole (pp. 55–59) may be introduced as the person who worked the Nuestra Señora de Guadalupe Gold and Silver Mines, situated a mile or so from La Abra's mines, "until interferred with by the authorities and they were compelled to leave there." Our Lady of Guadalupe went before the commission with a claim for $310,832, as indemnity for "*interruption and forced abandonment of mining operations*," and Mr. Cole himself presented a claim to the commission for the enormous amount of $758,437, for "interruption and forced abandonment of farming operations," and was awarded only $71,109.38, *less than one-*

tenth of the amount claimed. The deposition is silent as to these matters.

No doubt Mr. Cole, who was also part owner of the Guadalupe mines, *was mindful of these large claims* when he gave his deposition for La Abra. Especially so when he said, with such unction, "The mules captured from the said company, as aforesaid, were *of the largest and best quality of mules;* they were worth as much money as any mules in that country; 120 of them were so captured, *to his knowledge. I have never known said company to own a poor or bad mule or a poor horse* (p. 58)." He had a very decided interest in swelling the clamor against Mexico, and he yielded to that interest.

This witness tells us that "*all the American companies with which he is acquainted in the district of San Dimas*, excepting only one, have been driven off and compelled to abandon their mines and mining property by the connivance of Mexican authorities." Why were these companies not named? The Guadalupe Company, the only one of them that was named as having been driven off and compelled to abandon its property, set up a monstrous claim which, however, was dismissed. Is Mexico, then, to be condemned for barbarity on the testimony of the promoter of two large claims, which were undisposed of when he testified, and one of which, we now know, must have been grossly exaggerated by fraud?

If Juan Francisco Gamboa's deposition (p. 60) was not almost entirely hearsay, it would be seriously discredited by the fact that he speaks of American mining companies that were driven out of Mexico *without naming one of them.* These ever occurring omissions remind us of the pathetic language of Señor Avila, that "*it has been one of the principal disadvantages at which Mexico has stood before this commission that only the memorials have been known and served there to prepare the defensive evidence*, particularly in cases like the present, where it seems A SPECIAL STUDY HAS BEEN MADE NOT TO PRECISE ANY DATA." (Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 91.) The particular omission now in mind implicates both claimant and witness, and shows the trail of the conspiracy.

We come next to the deposition of William G. S. Clark (pp. 61–64), a citizen of Mexico, who *believed* himself to be English born.

He was a carrier, engaged in transporting machinery and supplies from the port of Mazatlan to La Abra's mines at Tayoltita. He testifies that his trains were frequently stopped and held by the Mexican military until money was lent, and that "*deponent charged his memory with the promises of remuneration for the so-called 'prestamos.'*" (P. 63.)

Further on he says:

> But although deponent was cognizant of many of said forced loans, while he was so engaged in the work of forwarding said

machinery and supplies, still he can not recollect the several sums so exacted and paid, nor the names of the officers of said army who made those exactions, with sufficient certainty to be able to testify on the subject of forced loans, satisfactorily to himself or to said company, except in the cases already named. (P. 63.)

What are we to think of a business man *charging his memory* merely with such transactions, and not pretending that the officials exacting these loans gave, or were even asked to give, any written receipt or promise for the money advanced!

Two instances of forced loans are mentioned particularly by the witness, but as one of them, the case of "Scottie," will be shown presently to be false, the other must be dismissed as unworthy of attention also.

But when one considers that Pedro Echeguren, the rich banker, and his firm, waxed prosperous in spite of *prestamos* (pp. 104, 105), it will not easily be understood how it came about that such exactions contributed to drive Exall and his *unnamed* friends out of the country in a tempest of haste. Nor do we perceive either that the occasional seizure and appropriation of a mule train could have had that effect on Exall and those same *unnamed* friends.

It is an interesting fact that this witness Clark is a friend and neighbor of the witness John Cole. (P. 63.)

Both this deposition and Cole's are long affidavits, *in narrative form*, and the fact that the testimony was not brought out by questioning makes it more

than probable that the affidavits were written by, and are in the language of, some third person, which is always *suspicious*, and recalls an instance where Lord Hardwick, with some warmth, suppressed a deposition because the witness had refreshed her memory as to certain facts from a paper prepared by her solicitor, but founded on contemporaneous *memoranda* made by herself, which paper she afterwards revised and transcribed before using it. (1 Whart. Ev., sec. 523, note 3, and cited by Lord Kenyon in *Doe* v. *Perkins*, 3 T. R., 752.) The probability of a similar practice here will be strengthened when we consider the manner in which the claimant's testimony for the commission was prepared.

We will return to this witness later in the discussion.

James Granger (p. 64) and Francis F. Dana (pp. 65–67) were examined to show that when Alonzo W. Adams appeared at San Dimas with an interpreter, and with witnesses to be examined before the local judge, in behalf of the claimant, there was such an exhibition of hostility by the judge and the populace that an outbreak seemed imminent. Adams thus describes the scene:

> Judge Anastasio Milan did, in effect, refuse to take the depositions of witnesses for claimant at San Dimas, in May, 1870, as stated in the depositions filed in this cause, which were given before Isaac Sisson, United States consul at Mazatlan, by James Granger, May 23, 1870, and by Francis F. Dana, May 27 1870;

and I reaffirm, and make a part of this deposition, all the facts contained in those depositions, which relate to the acts, proceedings, and occurrences by and before said Judge Milan in his court room, in May, 1870, where Aquilino Calderon and Bartolo Rodriguez were there to give their evidence, all of which matters were interpreted to me by said Granger and Dana, or one of them, at the time—and I will add thereto, a few words, according to the best of my recollection—which, on that point, is not easily obliterated; that when said Calderon attempted to testify, there was a crowd of people outside, about the doors and windows of said court room, hooting and yelling, and the court room itself was full of the local authorities and people, whose menacing looks and gesticulations toward said Calderon, said Rodriguez, and myself, were unmistakable, and they were so demonstrative and violent, that even Colonel Dana, who had lived amongst said people so many years, told me I was in personal danger; and the said Judge Milan made no effort to suppress said insulting demonstrations, and by his silence, if not otherwise, encouraged them. (P. 180.)

No such scene as this has been depicted as having occurred anywhere else in Mexico. Certainly, if anything like it had occurred elsewhere, the witness Dana, who was at home there, having been a colonel in the Mexican army, and who lived at Mazatlan, where a good many of claimant's depositions were taken, would have informed us of it.

The extraordinary scene at San Dimas, which is not far from Tayoltita, is, if true, powerful evidence *against* the claimant. In our view, it shows a spontaneous outburst of popular indignation that La Abra's emissaries should dare to be there for the purpose of getting testimony to support a claim which the community knew, or believed, to be, founded in fraud. Feeling, as they did, that testimony for such a purpose must be corrupt, it is not

to be wondered at that the judge and the people did not receive Mr. Adams with open arms.

Granger unconsciously seems to give some support to our theory that it was the known dishonesty of La Abra's claim that caused the disturbance, when he says that the hostility in the district of San Dimas was especially directed to "*the taking of testimony to support the claims of Americans who have been deprived of their mines and property by acts of Mexican citizens and authorities.*" (P. 65.)

However that may be, this occurrence, that took place in May, 1870, is not evidence of official or popular feeling toward La Abra in 1866, 1867, or 1868.

It is certainly extraordinary, if Adams was treated as he says he was by Judge Milan, that on his return to Mexico, in May, 1872, we find one of his interpreters taking a message from Milan to his family, and this same Adams buying supplies for himself and party at Judge Milan's store at San Dimas (p. 184). This reminds us of the *reconciliation* between Exall and Judge Soto.

Another witness, John P. Cryder (pp. 68–70), lived at the very spot, and "was frequently at the hacienda of *said* La Abra Company's works, and *intimately acquainted with Mr. Exall*, superintendent of said Abra Company." Certainly he could have related *circumstantially* the facts of Exall's so-called

precipitate flight *for his life*, be it remembered, but what he says is sadly *meager and disappointing*, to wit:

> When I left Tayoltita, about the last of March, 1868, said La Abra Silver Mining Company no longer had existence in the said district of San Dimas; they were broken up by the interference and molestations of the Mexican authorities in that district, and the capture of their mule trains, provisions, and supplies, by the military authorities of the Republic, while said trains were coming up with said supplies from Mazatlan. (P. 68.)

The witness then goes on to give the particulars of the personal difficulty between Exall and Judge Perez, which, as we have seen, had no more to do with Exall's so-called flight than with Maximilian's invasion. The witness also colors his testimony with some gasconade, which he attributes to Judge Perez and the prefect, Macario Olvera, which, if ever uttered, could hardly have impressed the witness or anyone else as seriously meant. Those who really intend to commit violence do not go about making public declarations of their purpose. What the witness thought of Olvera's vaporing is shown by his remark: "And I told Mr. Exall, *the first time I saw him* after the conversation I have related with said prefect"! Cryder, it will be noted, was Exall's *close friend!*

This deposition is in narrative form, and we strongly suspect was prepared by some agent of the company and is not in the witness's own language, as originally committed to writing. The suspicion is more than justified by what is in evidence as to the methods of the company's agents in *preparing*

depositions, which will be commented on in the sequel.

The witness Jose Maria Loaiza (pp. 71–74), "*miner, muleteer, and merchant*," when he speaks of the prodiguous richness of the mines, makes us marvel *that the claimant preferred a litigated claim before the commission to all that wealth.* The answer to such testimony is simple; the claimant's own conduct shows that it *can not be true.*

This witness testifies extravagantly as to the number of laden mule trains belonging to claimant that were taken and appropriated by the Mexican military authorities.

The untruthfulness of the testimony in the case on this point is clear, as will be shown.

The record shows that men like John Cole, William G. S. Clarke, and the witness himself were doing a thriving business as carriers of everything the mines needed, including the heavy machinery for the 10-stamp mill, and that they were constantly in the service of the company and other companies, and did not complain, as the claimant does, that they were ruined by the repeated captures of their trains. What idiocy, then, it would have been for the company to persist in having pack mules of its own and in doing its own carrying, *with the certainty of loss by capture before it*, when such service could be more satisfactorily rendered by others. It would require a cloud of witnesses

of undoubted credit to substantiate so absurd a theory. That we have no particulars upon which an estimate of the losses of the company on this head could be formed confirms the theory that *no such losses ever occurred.*

The witness, after saying that General Corona captured and kept for the use of the army "many of the mule trains belonging to the said company," states further that "this depredation occurred while Thomas J. Bartholow was superintendent of the company, at the end of 1865 or the beginning of 1866." (P. 72.)

We think the deposition of Pedro Echeguren, claimant's own witness, furnishes an additional ground for disbelieving what Loaiza says about the capture and appropriation of mule trains during the time Bartholow was superintendent. We take the following from Echeguren's deposition:

> Ninth. What do you know about impressments of men, money, and supplies belonging to said company, by the military authorities of this Republic, while the same were on the road between this city and the mines of said company at Tayoltita, at any time between June, 1865, and March, 1868; or of the seizure of said company's money, mule trains, and supplies, as "prestamos," by said military authorities?
>
> Answer. I recollect to have heard from the first superintendent, Gen. Thomas J. Bartholow, of the troubles and difficulties he encountered, soon after they occurred, on the road from this place to Tayoltita, in 1865 and 1866, when attending to the transportation of the company's machinery and supplies, being *continually detained on the road by the said military people*, and that he had to contend with them, and *to pay large amounts of money*, "*prestamos*," *in order to be allowed to go on;* and that these acts were repeated several times on the road, and although I did not witness those acts, they were common during the time referred

to in the question, and those molestations and hindrances, and the losses of this company in that way, were publicly spoken of here, and believed to be true. (P. 104.)

It is hardly possible that Bartholow or the witness would have confounded captures of trains with detentions for the purpose of exacting money. The latter, as we hope to show, had nothing to do with the so-called expulsion of the company.

It is true Bartholow did, in his only deposition, *safely made in rebuttal*, testify that "two entire mule trains loaded with provisions and supplies belonging to said company were captured by the military authorities of the Mexican Republic" (p. 170), but, *if this witness is to be believed at all*, we must be excused for preferring to believe what he said to his banker, Echeguren, *ante litem motam*, and when there was no motive to falsify. If we are not much mistaken, we shall, further on, show this General Bartholow to be far from a reliable witness.

Returning now to the witness Loaiza, we think that he is sufficiently discredited without reference to his own statement that he was *drunk* when he gave his deposition. (P. 295.)

Next comes Charles Bouttier (pp. 74, 75), a French citizen, who had resided in Mexico about sixteen years. He had heard at Mazatlan—it seems to have been proclaimed from the housetops—that La Abra company was to be "*driven out of the mines*," so, *the outlook being thus promising for investors*, he formed

a plan to purchase the property in conjunction with some, *of course unnamed*, gentlemen.

The mines, he says, were rich enough, but the capital necessary to develop them was the obstacle to carrying out the plan with the *unnamed* gentlemen. Aye, there's the rub!

Perhaps Mr. Bouttier, who had filed a claim himself against Mexico for $164,000 as indemnity for the destruction of merchandise by military authority, which was afterwards dismissed, yielded to an improper bias against that Government. But, however that may be, the conduct of La Abra, as shown, is so inconsistent with what this and other witnesses state with regard to the productiveness of these mines that we could not receive their representations as established fact though "all the bishops on the bench" should testify in support of them.

This witness says he has frequently heard "Mexicans boast of having taken a hand in driving away La Abra Silver Mining Company from the mineral district of San Dimas." (P. 74.) Who were those Mexicans, and how did they drive La Abra away?

When the importance of this case is considered, the scantiness of the claimant's evidence, in point of detail, *to which the court's attention can not be too often called*, is reprehensible, and plainly incompatible with good faith, and an affront to the dignity of Mexico.

Mexico, we earnestly submit, is not to be con-

demned on such evidence by a court used to investigate by judicial methods.

And now we have, again, Juan Castillo Del Valle (pp. 77–79), one of the proprietors from whom La Abra purchased. It was to be hoped that, *at this time*, at least, the claimant would ask the witness about the productiveness of the mines during the nineteen years he resided "at the minerales of San Dimas and Tayoltita," and call at the same time, for those books wherein, Bartholow says, "was written down and stated, with particularity, the profits with which they had worked said mines for a number of years preceding said sale, etc." (p. 173); *but no such question was asked* and no such call was made. The only question put on the point was this:

> Seventeenth. State if it be true that the said mines, belonging to La Abra Company, were previously worked with great success by the celebrated Zambrano; and if said mines are mentioned by Baron Von Humboldt, and also in Ward's celebrated work on Mexico; and whether it is publicly well known that the old reducing works and aqueducts there were constructed by the same Zambrano? (P. 79.)

Is not *this alone* enough to condemn the claimant's case, especially when taken in connection with Bartholow's underhand effort to prove that both Del Valle and Manjarez gave glowing accounts of the mines to him and Garth? (P. 173.)

It was not a tribute to the intelligence of the commission to ask Del Valle about what Zambrano did and what Humboldt and Ward said, and *omit to ask him the plain practical question, how much silver*

he got out of the mines per annum during the many years he worked them.

How can this omission to question Del Valle as to the yield of the mines and Bartholow's stealthy attempt to discredit him and his partner be reconciled with honesty in the claim? *It is the confession of fraud* that is always implied from the effort to prove an important fact by inferior evidence when better and more satisfactory is within reach.

Del Valle says, as plainly as language can express it, that "one of the principal reasons" which induced him to sell was the "want of protection experienced in those sparsely populated places, and which are distant from the superior authorities of the State." But Bartholow, thinking, no doubt, that it made against the claimant to have gone and planted itself for a great business purpose in the midst of such surroundings as Del Valle speaks of, tries to put a better face on things by endeavoring to produce the impression that Del Valle's first object was to raise money to enable him to obtain improved mining machinery, with a view to more extensive operations (p. 166), whereas his deposition, *as claimant's own witness*, shows that he had no such purpose at all, and there is not the slightest reason for disbelieving him. Indeed, he had no motive to make a misstatement. William Henry Smith, who went to New York to sell the mines as Del Valle's agent and introduced the property to Bartholow and

Garth, tries to make the same impression. (P. 42.) Here, then, is the trail of the conspiracy again.

As to what Del Valle says touching the treatment of foreigners in Mexico, we need only remark, for the present, that the witness left the district of San Dimas in 1865. Jesus Chavarria, the next witness, (pp. 80–84), and the companion of knaves, as we have shown, at some pains, must be passed as unworthy of attention.

If the witness Marcos Mora (pp. 86–90) had said what were the "*various ways*" in which the political chiefs, Laveaga and Olvera, "*tried to molest*" the claimant company and "*forced them to leave the place*," we should be able to determine whether what was thus done, if done, had a tendency to break up claimant's mining enterprise. But, nevertheless, this witness gives the clamaint's case a serious blow when he says he *never heard anything said* about La Abra being concerned in trying to bring about the annexation of the States of Durango and Sinaloa to the United States, which is extraordinary, *if Exall tells the truth* in saying "the report had become general and we were so harassed that it was impossible to continue our work with safety." (P. 31.)

It is said that this witness was *taken from his prison cell*, where he lay under a heavy accusation of official malfeasance, to confer with the governor of Durango as to La Abra's pretended application for

protection, and he tells us the governor, on his advice, refused the protection asked for. Can a matter of that gravity be determined on the testimony of such men as Exall, Chavarria, and Mora, unsupported by a single document and untested by cross-examination?

But let it be supposed that the claimant's agents were subjected to hostile treatment by petty judicial officers, or even by the governor of the State of Durango; is Mexico to be condemned as having outlawed them, in the absence of any evidence to show that the parties aggrieved appealed, in regular course, for protection to some higher authority empowered to apply a corrective? Is the protection that one nation extends to the citizens of another anything more than freedom of access to the constituted authorities, in common with its own citizens or subjects? It is only where such authorities fail to remedy an *abuse* of official power that an international question arises.

On this point Señor Avila makes the following intelligent observations in supporting his application to the umpire for a rehearing:

> The principles of international law, and the treaties between Mexico and the United States, certainly do not bind the Government of the former to secure to the citizens of the latter residing within its territory that the subordinate authorities will never annoy them, but simply that *they will enjoy the same resources as the native citizens* against all arbitrary acts to their persons and properties.
>
> How can those principles and treaties bind the Mexican Government to guarantee to the American citizens the impecca-

bility of all and every one of the persons constituted in public authority, and that they will understand their duties always and under any circumstances without making any mistake?

We have already cited two of the umpire's decisions that answer this question, and among several others in that direction we will quote the case No. 135, *William J. Blumhardt* v. *Mexico*.

The decision reads:

"The umpire is of opinion that the Mexican Government can not be held responsible for the losses occasioned by the illegal acts of an inferior judicial authority when the complainant has taken no steps *by judicial means* to have punishment inflicted upon the offender and to obtain damages from him. The umpire does not believe that the Government of the United States, or of *any nation in the world, would admit* such a responsibility under the circumstances which appear from the evidence produced on the part of the claimant, showing that Judge Alvarez was the person to blame, and that it was against him that proceedings should have been taken."

So it is admitted that no Government can be held responsible for the errors or illegal acts of its inferior judicial authorities, until all the resources created by law have been exhausted in vain for the punishment of the culpable and the indemnification of the damages; and why is this? Because no Government can be made responsible that all and every one of the persons invested with public authority will always act with rectitude.

If Governments could find persons to place in office exempt from all passions and human weaknesses, and if instead of selecting such persons they should appoint men who, for the very reason of being men, are always subject to commit errors; then only could they be held responsible for the faults committed by their subordinate officers.

And if we admit that neither international law nor existing treaties can hold Mexico responsible for the acts of the inferior judicial authorities, when the judicial resources have not been exhausted, what reason of difference can there be in regard to the inferior political officers, when equal resources can be employed against their arbitrary acts and errors? (Ex. Doc. No. 103, H. R., Forty-eighth Congress, first session, p. 106.)

It was on the ground that the claimants, in case No. 374, on the docket of the commission, had not exhausted their remedies under the Mexican law, that the umpire denied their right to invoke the remedy provided by the treaty of July 4, 1868.

In declining to pass on the merits of the case, the umpire said:

> The umpire does not feel himself called upon to decide whether the above-mentioned sentence was just or not. If the claimants considered that it was not so, *they failed in their duty* in not appealing to a higher court against the conduct of an inferior judge, *with a view to his punishment and to the recovery of the damages;* but they appear to have taken no steps whatever, either themselves or through their agent, to *avail themselves of the resources open to them.* * * *
>
> The umpire does not conceive that *any government can thus be made responsible for the misconduct of an inferior judicial officer* when no attempt whatever has been made to obtain justice from a *higher court.* (Cited by Avila, *ib.*, p. 103.)

In the case of Alfred Green, No. 776, on the docket of the commission, the claimant, like Exall, complained of false imprisonment in San Dimas and of hostility from the local authorities, but the umpire would not recognize his claim for the following reason:

> If the judge illegally imprisoned the claimant, *it was certainly in his power to appeal to a higher court,* and to sue Judge Perez for false imprisonment. It is shown that he was at Durango shortly after his imprisonment, and that *he had a lawyer there.* Nothing could have been more easy for him than to seek his remedy *through the courts.* But it does not appear that he took any steps in *that direction.* (Cited by Avila, *ib.*, p. 105.)

On precisely the same principle it was, seemingly, the umpire's duty to dismiss La Abra's case without attention to the merits, but for some reason he concluded, upon the say-so of Exall and his "*lawyer of high character,*" *unsupported by a single document,* that every reasonable effort had been made to secure protection from the Mexican authorities. Is it not

clear, we repeat, that conclusive evidence of the refusal of those authorities to furnish protection should have been required before passing judgment against Mexico?

Could La Abra have had a doubt that President Juarez, so friendly to Americans, would exert his utmost power to protect its interests? Its failure and Exall's failure to appeal to him for redress and protection is one of the many enigmas of the claimant's case, if founded in fact. It is almost as remarkable as the failure to invoke the protection of the minister of the United States, or some consul, in Mexico, to say nothing of the home Government at Washington.

It should be remarked, in dismissing Marcos Mora, that he does not hesitate to deny flatly several things imputed to him by *that great man of law*, Chavarria.

We come now to the witness, Capt. Charles B. Dahlgren. This gentleman is a son of the late Admiral Dahlgren, U. S. N. He is a mining engineer of experience, and the author of a book called "Historic Mines of Mexico."

He was the victim of an audacious fraud, practiced by Alonzo W. Adams, agent of appellant to collect testimony, assisted by Isaac Sisson, then United States consul at Mazatlan, Mexico, and others. These parties concocted and palmed off on the Joint Commission a deposition which Dahlgren never gave

(pp. 95–100). The way in which this plot was carried out is set forth, with particularity, in a subsequent part of this brief, and need not be gone into now.

Captain Dahlgren was examined, at great length, before the Foreign Relations Committee of the Senate with reference to the supposititious deposition. He denied much that he is made to say there favorable to the appellants' case, and made some statements that contribute support to the theory that appellant stopped working its mines because it was a losing business to carry them on. (See extract from his deposition in Appendix C.)

RECKLESSNESS AND MISMANAGEMENT.

La Abra's adventure was entered upon with the recklessness of men who had "Eaten on the insane root that takes the reason prisoner."

It was nothing less than an invitation to disaster to send down into Mexico Bartholow, *the banker*, and Garth, *the tobacco manufacturer*, with *carte blanche* to buy silver mines, a species of property with which neither of them had any acquaintance whatever, as Garth himself testifies. A better instance of a fool's errand than this mission can not be readily imagined.

During their brief stay in Mexico these blind emissaries bought and paid for the mines now in question, sinking their own and their friends' money

on their judgment touching matters wholly unfamiliar to them.

Garth never had seen so much silver as was piled up at Del Valle's (p. 722); but the witness Agasito Arnold tells the story better. He says:

> That it was also a matter of *public notoriety*, that the profits derived by Castillo from this business, were of small account; that deponent believes what was publicly said, that the Americans deceived themselves in regard to these mines, because, when they sought to make their purchase, *they saw at the establishment of Castillo, in Tayoltita, a considerable quantity of silver*, which proceeded from the small yield he obtained, and *the remainder, from what he had purchased at these mines, and from Gavilanes.* (P. 144.)

The *mere sight* of so much silver set the two on fire to buy.

The history of this delusion is given, with point and clearness, in the argument of Mr. John W. Foster, in the Court of Claims (pp. 8–20), which is filed as part of the brief for the United States, and will be found of value to the court, should it come to an investigation of the facts on this appeal.

From the beginning to the end of the enterprise was one unbroken reign of incompetency and mismanagement.

Garth, who was treasurer of the company and its sole channel of communication with the mines during the period covered by this claim, frankly admits, in his deposition, that the enterprise was wrecked by incompetency:

> Question. I think you said in your examination before the Senate committee that you thought things would have gone

much better if somebody had been in charge of that enterprise who knew something about it, did you not?

Answer. I think so still.

Question. I thought I recollected something to that effect.

Answer. And I think so still. (P. 733.)

He concedes the incompetency of De Lagñel, and that his successor, Exall, was sent down to the mines "to aid De Lagñel *as an accountant or as an attendant in the store for goods to be sold and bought," and not as a "metallurgist" or "miner."* Knowing all this, and that the incompetent Exall was left in charge, as superintendent, by De Lagñel, things were, nevertheless, allowed "*to go along in the same old way*," and the intention to appoint a man "qualified to fill the superintendency of the mine" was never carried out (p. 723). It is not easy to assign a reason for this neglect of the interests of the company, especially when we consider that De Lagñel wrote Garth, in October, 1866, that he would not remain at the mines "longer than next 1st March," and that "no money could tempt" him to do so. (P. 248.) This warning was repeated in a subsequent letter, dated January 5, 1867. (P. 258.)

De Lagñel, who succeeded Bartholow as superintendent, and whose testimony was purposely withheld from the Joint Commission by claimant, as we shall presently show, had been in the Regular Army, as lieutenant of artillery, from 1847 to 1861, when he entered the Confederate military service, where he remained until 1865. Being in search of employment, a friend introduced him to Garth and

Mr. Hearn, then president of the company. De Lagñel shall tell the rest:

> I told them what I had been, and I told them at the same time that *I had no practical knowledge of mining, and that I was not skilled, and doubted my competency to go, and went reluctantly.* My friend insisted upon my going, and I accepted it *under dire pressure of necessity*, I will say. (P. 491.)

He went to the mines early in 1866, but resigned and was back again in New York in May, 1867. Meanwhile, however, he wrote Garth to come down there to his assistance, because he felt that he "was unequal to the charge," and "did not care to have anyone's interest" in his hands "to their injury" (p. 507). When asked what induced this feeling on his part, he replied:

> I suppose the feeling that everybody has *who feels himself in a false position. My idea was that an expert, a man well versed in the business*, should be there. There was too much at stake, too much at interest, *and I felt that I was not equal to it*, and therefore I asked him to come down and look at the condition of things himself, and if he saw fit to either take charge himself *or put some fitting person in charge.* (P. 507.)

To sum the matter up, his desire was, he said, "*to escape from a false position.*" (P. 508.) The poor man finding, after he got to Tayoltita, "*that it required a degree of knowledge that I* [*he*] *did not possess*" (p. 508), became oppressed by a sense of utter incompetency for the business he had entered upon "*under dire pressure of necessity*" and under the insistence of the friend who had introduced him to the company, and who, we fear, had begun to tire of looking up occupation for him.

But, to make the matter worse, De Lagñel says that *those under him did not possess the knowledge he lacked!*

Need we go a step further in search of the cause of the Company's disaster? (P. 508.)

In the face of all this, Exall, who describes himself in one deposition as "*merchant*" and in the other as "*cashier*," testified, in *rebuttal*, in 1874, that he and De Lagñel were educated, experienced mining engineers. Supposing that all danger of De Lagñel's appearance on the scene had vanished with the closing of the evidence for the defense, and that the case would soon be in the hands of the Joint Commission for final action, Exall had the hardihood to swear:

> Previous to becoming such superintendent, both *Colonel de Lagñel and myself had each of us several years' experience in silver mining, and thoroughly understood the business practically; each of us also understood it scientifically, having studied the art of all kinds of silver and gold mining.* The work done by both De Lagñel and myself was done properly, and strictly in accordance with Mexican law and the usages of the mining district, in which the company's mines and works were situate, and the expenditures were judiciously and economically made. (P. 150.)

Bartholow testifies to the same effect and with the same reckless disregard of truth:

> Question 12. Is it true, as stated by one of the witnesses for defense, in substance, that the Americans sent to Tayoltita, to direct said mining operations, were ignorant of their business, and that they went to work at the same improperly, and without observing the laws and usages governing such mining operations?
>
> Answer. No, it is not true in any sense, for *the superintend-*

ents and subordinate officers of the Abra Company *were qualified for their positions, both by a knowledge of the science and practice of such mining operations;* and said works, while I was superintendent, were conducted properly, skillfully, and lawfully, and in strict accordance with the usages of such mining operations, by machinery and other modern appliances, such as we introduced there. (P. 171.)

And Collins, the president of the company, the tea merchant, the vestryman, whose *high character* is much paraded, he, who knew as much about the affairs of the company as Garth himself (p. 718), swore that the company had "*full confidence*" in superintendents whom he knew to be wholly incompetent. But let his deposition speak:

Question 13. Jesus Torres and Francisco Acosta, in their testimony given at Durango, in this cause, before Geronimo Lido, juez de paz, severally say, in terms or substance, that the company sent a commissioner or agent to Mexico to examine into the enterprise. Say whether this statement is true or not?

Answer. It is not true. Before the company was formed, Thomas J. Bartholow and David J. Garth, on behalf of themselves and the other gentlemen who subsequently formed the company, went to Mexico to examine and purchase the mines, but the company never sent out any commissioner, and had no occasion to do so. It had full confidence in its superintendents. (P. 148.)

Is it rash or uncharitable to say that here is grouped perjury enough to sink the whole case?

In view of the fact that Exall swears that mines which cost the company only $50,000 would have yielded, up to December, 1869, the net sum of at least one and a half millions of dollars but for the "interferences and molestations" of the authorities (p. 33), and in view of the fact that the company preferred to file a claim for damages before the com-

mission to asserting its property rights in the mines themselves, and elected to abandon all its property, real and personal, to any fate that might befall it, repudiating the authority of James Granger or anybody else to represent it after Exall's so-called flight, and in view of the fact that although Exall testifies that "early in 1868" he got $17,000 from 20 tons of ore, yet had to borrow $250 from Peña, in Mazatlan, when he reached there a so-called fugitive in March, 1868, we feel prepared to receive, without question, the testimony adduced by Mexico to show that it was the unskillfulness of the company's agents, added to the poverty of the mines, that caused La Abra's abandonment of the enterprise, because that testimony is the natural and the only solution of the otherwise inexplicable difficulties of the claimant's case.

The testimony of Don Ygnacio Manjarrez, who was part owner with Del Valle of the mines purchased by the company, *but not called by it as a witness*, be it observed, comes with irresistible force. He says:

> That said mines may have been rich formerly, but not in hands of this company, because their workings did not show such to be the fact. (P. 121.)

Again he says:

> The Americans abandoned their works, because they could not make them produce silver, and not because the Mexicans run them off, for they enjoyed all necessary security, in a higher degree than the Mexicans themselves; that in regard to the hostility which the claimants allege was manifested by the Mexi-

cans toward them, it is false, and I repeat that they left on account of the business in which they had engaged. (P. 121.)

Further on he says:

The only enemy they had in Mexico is found in that they could not succeed in getting silver out of the *tepetates* which this company took out of the mines. (P. 121.)

We have already seen what Del Valle says about the yield of the mines. (P. 139.) His testimony is greatly emphasized by the fact that, although examined by claimant *as to other matters*, he was not asked to testify with regard to the productiveness of the mines, while at the same time however, as we have seen, an underhand attempt was made by claimant to produce the impression that the witness and his partner had made great representations as to the yield of the mines when the negotiations for the sale were going on. (See Bartholow's dep., p. 173.)

But if Del Valle or his partner had made the representations which Bartholow attributes to them, *we may be sure Garth would have mentioned the fact in his testimony.*

It is noticeable, furthermore, that the claimant has made no attempt to asperse or disparage either of these witnesses, and a moment's reflection will show that they had no motive to digress a hair's breadth from the right line of truth. Standing thus fair, we feel sure the court will allow their evidence the weight we think it deserves.

Certainly the testimony of Del Valle and Ygnacio Manjarrez prepares us to accept that of the latter's brother, Cepomuceno, who says:

> That he does not know the quantity of ore which is obtained monthly at that establishment; that Castillo made regular profits, in some of them, and in others he lost money, according to the costs of labor at the mines, and finally, *that through economy, he kept up his business for ten years, owing to the excellence of his management, which enabled him to preserve it in good condition;* that the Americans may possibly have been led into error in regard to their purchase, *in consequence of the excitement which prevailed at the time on the subject of mining.* (P. 145.)

Surely, when Garth tells us that it was *incompetency alone in the company's superintendents* that caused the failure of the enterprise, it is not difficult to credit the statement of the witness Rodriguez that "*the Americans who have come here are incapable of mining it except at great expense*" (p. 114), and that of the witness Leandro Molino, who says that the company's superintendents "*have not been capable to have charge of haciendas and mines.*" (P. 117.) In addition to these witnesses, Nuñez declares that "*no one*" of the people sent by the company to work the mines "*understood such business*" (p. 118); and Julian Romero says, referring to the company, that "those whom they sent to take charge of their business *were incompetent to do so*" (p. 119); and Miguel Laveaga deposes that these mining operations "were not carried on in the ordinary way, or as is the practice in general," but, as we shall presently see, upon a novel plan, adopted in utter disregard of

customs of the country founded on wide experience (p. 143); and to what Laveaga says must be added the similar testimony of Emilio Contreras, who declares "that he knew from what he heard publicly stated that the works begun in Tayoltita by the Americans were not conducted by them, *not* [*sic*] even with regard to the most ordinary and practiced customs" (p. 142); and Jesus Torres and Francisco Acosta, the former an attorney and the latter a merchant, of Durango, both say that those Abra adventurers "*did not go to work in the mines in a regular way, but rather failed to observe the smallest details usually taken into account in the working of mines*" (p. 137).

All these witnesses and Garth, the treasurer of the company and the channel of communication between it and the mines, being agreed that it was the incompetency of the company's agents that brought disaster on it, we do not well see how the point can be disputed.

What Exall and Bartholow say to the contrary is not worthy of a moment's consideration, for, as we have seen, the credit of those witnesses is entirely overthrown, and no court of justice would think of making anything they have said that has not good extraneous support the basis of judicial action. The only safe course in such cases is to enforce the principle, *falsus in uno falsus in omnibus*, and reject their testimony entirely. In his elegant and philosophical

treatise on evidence Mr. Starkie thus lays down the rationale of the rule:

> As the credit due to a witness is founded in the first instance on general experience of human veracity, it follows, that a witness *who gives false testimony as to one particular, can not be credited as to any*, according to the legal maxim, *falsum in uno, falsum in omnibus*. The presumption that the witness will declare the truth *ceases as soon as it manifestly appears that he is capable of perjury*. Faith in a witness's testimony *can not be partial or fractional;* where any material fact rests on his testimony, the degree of credit due to him must be ascertained, and according to the result, his testimony is to be credited or rejected. (Vol. 1, Part III, Sec. LXXXVII.)

As further reflecting on Bartholow's credit, we may refer at this point to De Lagñel's surprise, on taking charge of the mines as Bartholow's successor, to find a debt there of between $20,000 and $30,000, of which Garth, the treasurer of the company, knew absolutely nothing. (P. 505.)

THE PERSECUTION THEORY.

Garth tells us that he and Bartholow were about three weeks together at the mines making investigations, with a view to becoming purchasers (p. 721), and it is reasonable to suppose that if the American mining companies already established in the district of San Dimas were living under the terrorism which, it is claimed, eventually drove all of them away but the Durango Company, Garth and Bartholow would have heard of and seen this alarming condition of things and quickly abandoned the idea of investing in such a country. To suppose that of all the suf-

fering Americans in San Dimas there was none to warn his fellow-countrymen of danger, *if danger there had been*, would be absurd.

In the nature of things there was some lawlessness about Tayoltita, growing out of the rough character of the population and the distance of that region from any seat of superior authority. Indeed, Del Valle had suffered from this lawlessness, and after living nineteen years in the San Dimas district desired to sell out and get away from it. Del Valle was a *Spaniard*, but it is not intimated anywhere that enmity on account of his nationality had anything to do with the condition of things of which he complained. It further appears that the lawlessness in question was only occasional and by no means the rule, as must be inferred from what Garth and others tell us of the *quantity of silver piled up at Del Valle's.* (P. 722.) Indeed, the only instance of lawlessness given by Del Valle is when the town of San Dimas "*mutinied*," as he says, against him in the year 1856.

Although a civil war was going forward in Mexico and the country was unsettled by it, it is scarcely reasonable to suppose that the situation was at all alarming in San Dimas during the three weeks the tobacconist and banker were engaged in testing ores, or they would not have started an enterprise there that was certain to entail a heavy expenditure of money, unless the court is prepared to adopt the

theory that La Abra's story must be accepted in the teeth of its gross improbabilities. Indeed, Garth tells us in his deposition that in crossing from Mazatlan to Tayoltita, a distance of 150 miles, he saw no appearance of war or commotion. (P. 721.)

It is a fact, then, of *immense significance*, that Garth and Bartholow, after spending about three weeks at Tayoltita, deliberately started the enterprise there, and that Bartholow posted off to San Francisco to secure the improved, expensive machinery which was to revolutionize silver mining in San Dimas, and which *the two incompetents* had determined to introduce on their own responsibility.

These facts alone are sufficient to overthrow the persecution theory, but there are *others*, whose tendency is strongly in the same direction, to which the court's attention will next be invited.

It savors of the ludicrous to hear this cry of persecution from a company that dared to go into Mexico, when that country was riven by intestine war, when public authority was relaxed and society —— in a somewhat feverish, turbulent condition, and establish itself at Tayoltita, in a region distant from any seat of superior power, among an illiterate, narrow, and provincial people, clinging tenaciously to old-established customs and methods, as such people do the world over, and there boldly commence to put in operation revolutionary ideas on the subject of beneficiating silver ores, and to

that end begin large and expensive preparations, which were regarded as a menace rather than a blessing by the simple native population.

Without waiting until its new plant for beneficiating ores was ready for operation, claimant destroyed the old reduction works, which were the dependence of the small miners in and around Tayoltita, in the absence of any necessity whatever, since the new works, as originally planned, were to occupy an adjoining site, and thereby caused great public inconvenience and dissatisfaction, as may be imagined, when it is understood that the nearest point to that place for beneficiating ores was the town of San Dimas, some miles off, to which, however, they could not be taken with profit on account of the expense of transportation.

Exall tells us that "it was only *just before said abandonment* that the company's mill, machinery, and other works were completed and in readiness for active and perfect crushing and beneficiation of ores," etc. (P. 156.) And it can be readily perceived how this improvident, inconsiderate, and we may say *hostile*, action of the company put a stop to mining operations about Tayoltita. As mining is pretty much the only occupation of the people there, this action of the company was like destroying the only gristmill in a country neighborhood here and compelling the people to wait an indefinite time until another mill, on some new and strange plan,

should be constructed, leaving them to consume their grain unground in the meanwhile. Indeed, these people soon discovered that Abra's agents were smatterers and pretenders, as we know they were, in so far, at least, as silver mining was concerned, and, consequently, there was nothing reassuring or quieting in their promises to furnish something better in the room of the reduction plant they had so recklessly destroyed.

And not only so, but we shall see that this so-styled *hunted and persecuted* company was even bold enough to disregard the mining laws and regulations of the country to such an extent as to create general alarm and require the interference of the local authorities. This conduct of the company's agents might well have been regarded by those authorities as an attempt to make peons of the laborers in the company's employment, to prevent which abuse labor in Mexico is subject to governmental supervision. Peonage is a rudiment of slavery which it was hard to prevent, owing, no doubt, to the ignorant and dependent condition of the laboring population of the mining districts of Mexico. It was found necessary in this country to extend a like protection to the emancipated negroes of the South against similar abuses by amending the Federal Constitution, so as to place them, in certain respects, under the guardian care of the General Government.

Let us now see what the witnesses say about the

destruction of the old reducing works, constructed at much expense by Del Valle, and the public inconveniences that followed.

Bartolo Rodriguez, a miner by occupation, was asked—

> Whether it is true that on account of the hacienda for beneficiating ore according to Mexican custom, in Tayoltita, having been destroyed by the Americans, happened their own destruction, *and was also the cause of the ruin and almost entire suspension of said mineral district*, for the reason that, such being the case, *the miners who otherwise might have worked some of the mines do not find it profitable to pay for the transportation of ores to the haciendas of this place* [San Dimas]?

To this question he gave an affirmative answer. (P. 109.) Another witness, Refugio Fonseca, in answering this same interrogatory, says "that all that is stated in this interrogatory is true, *so much so that nobody is left in this mineral district of Tayoltita.*" (P. 111.)

Another witness, Ramon Aguirre, says:

> That the Americans, on account of having destroyed the haciendas for beneficiation, in accordance with Mexican custom, *brought ruin upon themselves, and almost succeeded in suspending mining operations entirely in the said mineral district, for the reason that those miners who could otherwise have worked some of the mines* could not make it pay to transport their ores to the haciendas in this place [San Dimas]. (P. 110.)

Bartolo Rodriguez was again examined by Mexico, and after stating that the company had destroyed the hacienda for beneficiating ores which had been left "in good repair" by the former owners of the mine, goes on to say:

> That in consequence of this demolition of the hacienda of Tayoltita, formerly belonging to Castillo, by the Americans

the town of Tayoltita has been almost entirely abandoned, for to those who would like to carry on mining it would not be profitable to remove their ores to San Dimas for beneficiation. (P. 114.)

These witnesses are confirmed by De Lagñel, who says, of the old mill, that it "was torn down and broken up; the wheel had disappeared; I don't know what had become of it. The arastras were all torn out." (P. 485.)

He relates that the new mill had been on the ground "in detached pieces" *for some time before his arrival*, that it was a *year after his arrival before the new mill went into operation*, and, furthermore, that if the old mill had not been destroyed, *the company could have reduced ores during the time the new machinery was being put in place.* (*Ibidem.*)

Indeed, Exall himself says that the plant at the hacienda for beneficiating ores was completely dismantled (p. 151) (which is, no doubt, what the witnesses mean when they speak of the destruction of the hacienda for beneficiation), and that the new plant for that purpose was not ready for operation until just before he abandoned the mines. (Pp. 151 and 156.)

He states, with reference to the destruction of the old plant, as follows:

The machinery and fixtures removed were of the simplest kind, old fashioned, much worn and completely out of use, *except by Mexicans*, who work mines and crush ores on a small scale by arrastrars, or the old "Patio process," and the reduction and beneficiation of ores by them was slow and imperfect, and their working capacity very limited, and were inadequate for the work prosecuted on the scale contemplated by this company. (P. 151.)

It provokes a smile to see the lordly contempt with which this sciolist and pretender affects to regard the witnesses who shared the common opinion that success in mining silver could not be reached without experience and observation and due attention to the methods and customs of the country as well as of science. He thus refers to them:

> They were wholly ignorant of modern mills and machinery, and, in fact, of any process for the crushing and beneficiation of ores, other than by the common Mexican patio process, which is out of use and entirely unsuited to large operations, like those of said Abra Company, at Tayoltita. (P. 151.)

This is, indeed, dogmatic language to come from such a source.

It would appear from Ward's book on Mexico, which is quoted from by the witnesses W. H. Smith, Bartholow, and Cole, that La Abra's ill-starred adventure in silver mining was but a repetition of others that had been made before in this same mineral district of San Dimas. We ask the court's attention to the following extracts from the second volume of that work:

> In every other commercial enterprise *some previous acquaintance with the subject* might have been thought necessary; but the mines were to be an exception to all ordinary rules, and on the principle, I suppose, of taking *omne ignotum pro magnifico*, vast sums were embarked in schemes of which the very persons who staked their all upon the result know literally nothing except the name.
>
> P. 75: "Nine-tenths of those who engaged in the arduous task did so under the conviction that *water* was the only obstacle which they had to overcome, and that the possibility of surmounting this by the aid of English machinery was unquestionable. * * * *The practical experience of the native miners was underrated; their machinery condemned, without any pre-*

vious inquiry as to its powers or the different degrees of perfection which it had attained in the different districts. Gradual improvement was pronounced too sluggish a process, and Cornwall was drained of half its population in order to substitute an entirely new method for that which had been endeared to the Mexicans by the experience of three centuries. The total failure of this attempt was the natural consequence of the want of consideration with which it was made." * * *

P. 77: "The Anglo-Mexican Company alone had expended in September, 1826, nearly £30,000 in salaries to men, almost all of whom have now been dismissed, and full £100,000 in machinery (including duties and carriage from the coast), not one-twentieth part of which either has been or ever can be made use of, the machinery of the country having been found fully adequate for the drainage of their mines."

Pp. 80, 81: "In general the selection of mines among the first adventurers, was determined by a reference to Humboldt. * * * Humboldt never asserted, or meant to assert, that a mine, because it was highly productive in 1802, must be equally so in 1824. * * * Unfortunately, the consequence of these statements was to direct the attention of the world exclusively to spots which, from the enormous quantity of mineral wealth that they have already yielded, may fairly be supposed *to have seen their best days.*" (Quoted, Ex. Doc. No. 103, H. R., 48th Cong., 1st sess., p. 277.)

If what is said by this author about the rash inattentiveness of former adventurers to local methods and opinions had been written to account for La Abra's failure it could not be more applicable.

It seems equally clear from the evidence that the company not only looked down upon local opinion and custom, but that it operated its mines in defiance of law and with little respect for the contract rights of its employés.

What a world of meaning there is in the witness Sloan's account of the difficulty between Exall and Judge Perez where he says that the trouble grew out of the fact that "the judge went into the haci-

enda to speak to one of the PEONS who was at work there." (P. 120.) *Yes; in the very teeth of the law and policy of Mexico, La Abra, the hunted, the persecuted La Abra, would have its* PEONS!

The witness Victoriano Sandoval says:

> That he, the deponent, being a miner in the mines of said company, the superintendent ordered him to procure people to do the work, promising to pay them all cash for their work, which they did day and night. That in a short time they declined to perform this obligation, promising to pay them 10 shillings per day, (reales), in current money, from 6 in the morning till 6 in the evening. This they refused again to do, and offered to pay them one-half in money and one-half in goods; and shortly after they repeated their refusal to carry out their promises. Then they were summoned to appear before the authorities, and it was agreed that they should pay a third part in money; at the expiration of a few days, even this they failed to comply with, which gave rise to new complaints before the authority, and said authority demanded that they should comply with their obligations, but without resorting to any violent measures or attacks upon property; that this is all he can say with truth. (P. 131.)

Another witness, Aquilino Calderon, states:

> That what he knew was that those of the company having failed to carry out their contract to pay, as they had pledged their word to do at various times, the workmen exacted what was their due, refusing to work until what had been agreed upon was paid to them; and in consequence of this unanimity, they deemed wrong that the deponent should have gone out to work at the mine, and they ordered him away from the mine of Del Cristo, where he held the position of crusher. (P. 133.)

The personal incident to which this witness refers, and of which it is attempted on claimant's part to make capital (see Exall's dep., p. 154), amounts simply to this, that witness was regarded and treated by his fellow-miners as a traitor, a "scab," in going to work while "the strike was on."

But this defiant bearing of the company having been carried to such length as to hurt seriously the staple industry of the people and threaten the public peace, the local authorities charged, it must be presumed, with the supervision of mining operations by the laws of Mexico were compelled to interfere.

The following documents, emanating from those authorities and evoked by repeated complaints against La Abra from its ill-used and oppressed employés, we give in full, as proof of the absurdity of the cry of persecution raised by this *peon-loving* company.

They are marked, respectively, Exhibits V, W, X, and Y (p. 54), and here arranged in proper chronological order:

EXHIBIT Y.

GEFETURA POLÍTICO OF THE PARTIDO OF SAN DIMAS.

To Judge Guadalupe Soto, Sole Conciliador, at Tayoltita:

From your communication, this Gefetura has learned, with great displeasure, the abuses committed by these Americans, *who at first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one-third.* Notify them through your court, and by my order, to *at least comply with the last contract*, that is, to pay them one-third in money, otherwise that they vacate the mines, and allow the operatives to work them as they can, since *neither the mining ordinances permit them to pay in goods only, nor will the Government consent to such abuses, and it is already tired out with the thousand complaints upon this subject.*

You will show this communication to the American in charge in that mineral.

Independence and reform.

M. MORA.

SAN DIMAS, *June* [*July?*] *3d, 1867.*

EXHIBIT V.

2D COURT CONCILIADOR, }
TAYOLTITA. }

To the Superintendent of the Abra Reducing Works:

By the communication of yesterday, dated the 3d, received from the gefe politico of San Dimas, I notify you that if you do not intend to work the Abra mines as they were formerly worked, *upon the system of "thirds,"* that you immediately vacate the mines, to allow the operatives to work them on their own account, without further loss of time.

Liberty and reform. Tayoltita, July 4th, 1867.

GUADALUPE SOTO.

EXHIBIT W.

2D COURT CONCILIADOR, }
TAYOLTITA. }

To the Superintendent of the Abra Reducing Works:

The court notices, with the greatest displeasure, that twenty-four hours have elapsed since it addressed you a communication, to which you have made no reply. You are ordered *to arrange your work with the operatives* within two hours; and if you come to no arrangement, you will vacate the mines, so that they may lose no more time.

Liberty and reform. Tayoltita, July 5, 1867.

GUADALUPE SOTO.

EXHIBIT X.

GEFETURA POLITICO }
OF SAN DIMAS. }

To the Representatives of the Mines, Tayoltita:

The Gefetura, being informed that you have stopped the mines in that mineral, informs you that this is not the engagement you entered into with me, and that it hence believes that you place no value upon your word. *Nevertheless, if you don't choose to continue your work, give the people permission to collect ores in the mines, as I will not hold myself responsible for the consequences, in a town where the people are without work.*

Independence and reform.

San Dimas, July 10, 1867.

M. MORA.

This communication was followed the next day by a reply:

TAYOLTITA, *July 11, 1867.*

To the Political Chief of San Dimas:

DEAR SIR: Your letter of the 10th instant was received last evening, and from its contents I thought that no answer was

expected, *and I had no intention to reply to it.* This morning I was advised that the answer was expected by you. In respect to the *compromise* of which you spoke, it was made while *I was in Mazatlan*, to last until I should return, and then I was to arrange with you as best I could. And if you had known the circumstances and causes which led to the paralyzation of the works it would have been apparent to you that it was not possible to do otherwise. *I have offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about the affair,*

I am, your most humble servant,

CHARLES H. EXALL,
Supt. La Abra S. M. Co.

(P. 267.)

It should be said at this point that Guadalupe Soto, who describes himself, by the way, as "*a tailor of this neighborhood*," and is the author of two of the above-given documents, says in his deposition (p. 129) that—

> The communications which he issued were in consequence of the fact, that besides the disturbance on the part of the people, he had received orders to that effect from the political chief, Marcos Mora; *all in consequence of the failure of the superintendent to contract with the operatives for working the mines.*

He also says that he issued the communications in question because "*there had been a rising of the people to compel him to*" (p. 129), in which words there is pregnant testimony against the company, for men do not generally quarrel with their bread and butter without a grievance of some kind.

These official papers showing the action of the political chief, Mora, and the local judge, Soto, have been discussed by appellant's counsel without reference to the facts to which they belong. They have been taken out of the context of events in which

they have a place and appealed to as proof of an aggressive movement on the part of the constituted authorities, whereas they show *the reverse to have been the case*, especially when read in the light of those events.

Looking now at these papers in the light of the surrounding circumstances, it is apparent that the trouble with the authorities was brought about by the persistent effort to run the mines on the profits of the company's supply store, and, as part of the plan, make the operatives take less and less cash and more and more merchandise, and finally *all merchandise*, as the company became more and more crippled financially.

The correspondence in the letter book shows what an important part the store played in the conduct of the enterprise. In a letter dated March 7, 1866 (p. 210), Bartholow, the first superintendent, refers to it in these terms:

> Our sales range from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store under good management will, I think, yield a net profit of twenty thousand dollars per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3c. to 6¼c. at a time. I have seen women stand at the counter and make three purchases of cheese of 3c. each; they do this under the impression that they get more in the aggregate by buying in such small quantities; yet when they come to purchase a dress, a rebozo, or shawl, they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent., and fancy dry goods from 60 to 100 per cent., and the most difficult task I have now is to keep an ample supply on hand to meet the demand. (P. 211.)

And in another letter from the same to the same, dated April 10, 1866 (p. 219), occurs the following:

> Our store is doing an excellent business. Our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill work systematized as it should be, the store if kept well supplied *will run the entire concern, thus reducing the cost of our labor about fifty per cent.* (P. 220.)

In a letter of August 16, 1866, to Garth (p. 239), De Lagnel, Bartholow's successor, says:

> When I arrived in Tayoltita, the payments were made mostly *in cash*. After the first month I reduced it to *one-half* and the next to one-third cash, and rest in goods.

Again he says, writing to Garth, January 5, 1867: "As those employed by me receive *two-thirds* of their earnings in goods, they have no great need to purchase more."

Following the company in its downward course, we find in the letter book a letter from Exall to Garth dated July 13, 1867 (p. 271), in which the writer states that, shortly before, he had "reduced the cash payment from one-third to ——," something which is illegible in the letterpress copy, but which is plainly either *still less cash* or, more probably, *all merchandise.*

It was to put a stop to the abuse of grinding down the operatives in order to build up the supply store, about which a "thousand complaints" had gone up to Mora, that he interfered on the side of humanity and against corporate greed and oppression.

De Lagñel's letter of August 16, just quoted, shows that Mora in his communication of July 3, 1867 (Exhibit Y), was strictly correct in stating that the company "first agreed to pay their operatives in money, then to pay them half and half, and thirdly to pay them one-third," and Exall's letter of July 13, although not legible as to a word or two, *compels the conclusion* that the company had reached the tyrannical pass of requiring its operatives to accept goods only in payment.

A point, therefore, had been reached where the reserved authority of Government incident to mining concessions should be brought into operation to curb this arrogant and despotic corporation; and, when we consider the provocation offered, it must be confessed that the method of interference adopted by Mora was of a very mild type, for he merely requires the inferior magistrate, Soto, to notify the company through his court "*to at least comply with the last contract; that is, to pay them one-third in money.*" * * * Failing to do this, the company is notified "*to vacate the mines and allow the operatives to work them as they can.*" A great handle is sought to be made of this part of the order, counsel having gone so far as to term it an act of *dispossession.* The truth is, however, that the translation of the order given in the record (p. 54) and relied on by appellant does not convey the true meaning of the Gefe, as is shown in the opinion of Commissioner

Zamacona. The mistranslation is thus pointed out by him:

> This document is incorrectly translated, because the phrase "de lo contrario dejen las minas que las trabajen los operarios á la manera que puedan," the exact version of which is, "*otherwise, let the operatives work the mines as they can*," was interpreted as an order of ejectment by writing it, "*that the company were to vacate the mines and to allow the operatives to work them as they can.*"
>
> The Spanish verb "dejar," which is equivalent to the English verb "to let," when used in connection with another active verb, as "dejar caer," "dejar trabajen," or "dejar que trabajen," does not signify to remove from, to dislodge, &c., nor involve any of the ideas conveyed by the English word "vacate."
>
> The violence done to the meaning of the sentence in question above, by the translation, is shown by the fact that in the Spanish text there is but one sentence of what is called in grammar the infinitive mode—"dejar las minas que las trabajen"—the determining verb of which is "dejar" and the thing determined "que las trabajen." In English there are two different expressions, one "to vacate the mine," and the other "to allow the operatives to work them as they can." By this discrepancy, *what was simply a well-intentioned notice or admonition by the local authorities assumed the aspect of an act of despotism or a threat against property.* The history of this matter fully shows how little truthfulness has been employed by the claimant on this point. (P. 399.)

This ought to be *conclusive*, for it can not be supposed that Señor Zamacona would have stooped to anything so derogatory as to attempt to gain an advantage for his Government by a deliberate attempt to pervert the sense of Mora's order. Indeed, Mora's subsequent order of July 10, 1867 (Exhibit X), lends no little support to the commissioner's view, whether it relates to the same affair as that of July 3, 1867, or not. In that order the Gefe, after rebuking Exall for not keeping his word, says: "Nevertheless, if you don't choose to continue your

work, *give the people permission to collect ores in the mines*, as I will not hold myself responsible for the consequences in a town where the people are without work."

Exall having still further *defied* the authorities by refusing to carry out the compromise that had been recently made with the operatives under official sanction, it would seem that if the gefe, Mora, had intended to dispossess the company it would have appeared in the order of July 10, but so far from there being any such purpose in the order, *it invokes the permission of the company* to the people "to collect ores in the mines," in obedience to a beautiful Mexican custom, which takes rank with customary law and springs from the idea that a mining concession is impressed with a public trust. Commissioner Zamacona describes it as follows in his opinion:

> To *pepena* [*pepenar metal en las minas*, is the language of the original]. the metal is something analogous to what the gleaners do who follow the mowers in the grain field. This precept, which the Bible inculcates as one not only of charity, but also of law, with regard to the crops, the Christian customs of Mexico have made extensive to mines, and the act is so frequently practiced that it has given rise to the making of a word expressly for the occasion: and precisely because *pepena* is a gratuity due to the charity of the possessor, it requires his consent. and this is what the gefe politico of San Dimas asked in behalf of the people to keep them from starvation, as they were without work.
>
> Consequently, "to *pepena* metals in the mines" is not precisely the same as "to collect ores in the mines," as is translated on page 53, or "that they may work the mines," as is still more incorrectly said on page 154 of the other translation.
>
> It is as unjust to bring a charge against Mexico because the gefe politico of San Dimas, under the circumstances, asked the

superintendent of the mines to grant the people permission to *pepena* metals, as it would be to say that Ruth was committing an unlawful act when she was discovered by Boaz. (P. 402.)

Recurring now to Exall's letter of July 11, in reply to the Gefe's of July 10, we find that he meets the Gefe's rebuke of not having kept his word by stating that the compromise referred to by the former was made while he, Exall, was in Mazatlan, to last until he should return, when he was to arrange matters himself with the Gefe. He then proceeds to state a new offer he had made the operatives:

> *I offered to the operatives all the mines, to be worked on shares by the carga, and some are already at work, and desiring that with this there may be the most friendly understanding about the affair.*

Here ended whatever trouble there was, and the following extract from Exall's letter to Garth, of July 13, 1867, reporting the matter, shows that what has been paraded as a terrible exhibition of tyranny was regarded by the superintendent at the mines as merely a trifling annoyance:

> When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan, a small force in each. Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from ⅛ to — (which occasioned a stop for 8 or 10 days, which I was glad of, as it was so much clear gain, *and a little spat with the officials, which was gotten through without much trouble*), I thought it best not to stop off immediately, but prepare the miners for the change. I let them work on one week longer, and during that week informed them of my intentions. *They said nothing offensive*, but of course were disappointed, *as it would be a bad*

time for them to be without work in the rainy season. Since stopping off we have been trying to make arrangements with the men to work by shares and by the carga. I have succeeded in getting four miners to work by the carga. They are working in the Arryan, and getting out some good metal. I hope to be able to keep them there; *by doing so it will secure the mine in every way.* Four miners is all I had there before. Mr. Cullins thinks that in a short time he will be able to get more men at work in the other mines. *We can do better with them when they are a little hungry.*

Working in this way is much better and attended with the least expense. They are provisioned for a week and charged with what they get. What metal they get out is assayed; if it assays an amount worth working (we pay them in goods *a little money now and then*), about one-half its assay value. They, of course, will get out nothing but good metal, if it can be found. You see, in this way we get the metal out free of cost, *buy it at one-half its value, pay in goods, and make a handsome profit on them.* As long as the men will work in this way (which they will not do unless they get good metal) it will be our best way of working the mines. We must not expect them to get out any amount, but what is gotten out in this way will pay for packing down from the mountains. If I am not able to get men in the other mines I am privileged by the mining laws of the country to stop working in mines four months in the twelve. As these mines have been steadily worked over a year, I can safely take advantage of the privilege. (P. 271.)

Here we find the superintendent of this *persecuted* (?) company characterizing his late experience with Mora and Soto as "*a little spat with the officials, which was gotten through without much trouble.*" Here we read the account of his plan of forcing the operatives into terms by stopping work just as the dreaded rainy season was approaching, which is a fitting introduction to the cruel remark that follows: "*We can do better with them when they are a little hungry.*" We see, furthermore, that, notwithstanding Mora, in his first communication, had notified Exall, through Soto, that "*neither the mining*

ordinances permit them [the Americans] to pay in goods only, nor will Government consent to such abuses," Exall was *defying* the local authorities by *paying in goods.* Here are his words: "You see, in this way we get the metal out *free of cost, buy it at one-half its value, pay in goods, and make a handsome profit on them.*"

Is this the language of the head manager of a corporation that was being hunted and persecuted by Mexican officials and Mexican mobs?

But it is said that Exall takes a more serious view of the situation in the following passage from the same letter:

> The officials are getting daily more troublesome; their demands are all *foolish* and very unjust; but we have to do the best we can with them *and take things as quietly as possible.*

If the situation of the company at Tayoltita was as contended by appellant's counsel, Exall's language in this sentence is one of the remarkable features of the case. It is the language "of the wrathful dove or most magnanimous mouse." Its inadequacy to convey the meaning attributed to it is such as to make it hard to preserve one's gravity when counsel refers to it in support of his theory of persecution and violence.

We think that Sundell expresses the very idea that was intended to be conveyed by those words when he said, in answer to a question put by appellant's counsel:

> I heard of the so-called "rising of the people" and the "orders from the political chief, Marcos Mora," *but I did not consider*

the same as serious trouble, but only as petty incidents, annoying for the moment and devoid of results. (P. 544.)

This is confirmed by Francisco Torres, who was born at San Dimas and lived there all his life, and who says: "*I never heard that any difficulties arose between the company and the civil authorities at that place* [Tayoltita]." (P. 551.)

As for Soto's orders, they resulted in nothing, and were evidently treated by the company with the contempt they deserved, as going beyond what Mora's order had directed.

A great deal has always been made by opposite counsel of these orders, ignoring the fact that Mora's order to Soto of June [July?] 3, Exhibit Y, contains this direction: "YOU WILL SHOW THIS COMMUNICATION TO THE AMERICAN IN CHARGE OF THAT MINERAL;" and Granger tells us that the original order was exhibited to him and Exall by "Judge" Guadalupe Soto. (P. 49.) Manifestly, Soto's orders, *whatever their language*, were to be read in subordination to the one they purported to carry out. Indeed, the direction in the latter to Soto *to show it* "to the American in charge of that mineral" would seem to *supersede the necessity for any order at all from Soto.*

Of Soto it may be truly said that he was a low character, who did no credit to the judicial or the tailor's bench. He carried on a wine shop and gambling table opposite the company's supply store, and there

the operatives squandered what money the company was pleased to pay them. It irritated Soto and hurt his business to have them paid in goods, but this *persecuted, downtrodden* company went right over its oppressor and had its way in the matter to the end of its career at Tayoltita.

Furthermore, our theory of the Mora-Soto episode is supported by the omission to make it a distinct ground of complaint in the memorial filed before the commission. That it was not so used is strong to show that the argument based on it in the court below was an afterthought.

And here we would call the court's attention to the fact that the first of the series of the Mora-Soto documents, namely, Soto's letter to Mora, calling his attention to the abuses committed by the company, is missing, without any explanation whatever, and without an effort to supply its place with secondary evidence. May we not fairly presume that this document was suppressed for some reason by the unprincipled Granger, from whose custody the others came?

When Soto denounced Abra's hacienda, Guadalupe, on the ground of abandonment, and Exall filed an opposition before Soto's son-in-law, the *dreaded* Olvera, prefect of the district, did he cringe before him; did he use the language of "low-browed baseness?" On the contrary, he concluded

his opposition with such a demand for redress as might have been expected from a citizen of this country:

> Although I have no personal interest in this matter—being placed here by the company in charge of the mines, haciendas—*I can not allow any of them to be taken without using every lawful means in my power to retain possession of them.* And in this business *I demand equal and exact justice, without fear or favor, and leave the matter in your hands, with the request that you will protect me in all my legal rights and privileges.*
>
> Trusting that you will take proper and speedy steps to arrest this matter, I remain your obedient servant. (P. 278.)

What is more, the opposition was successful (p. 50), although Exall seems to admit, in his letter of December 5, 1867, to Del Valle, that Soto's denouncement was not without probable cause. (P. 279.)

These proceedings were in December, 1867, not long before the so-called expulsion, and *after* the Mora-Soto incident, and just one month previous to the Perez "affair," and at a time when, we are told by the veracious Exall, the condition was rapidly becoming unbearable.

Bartholow was equally bold and energetic in defense of the company's rights.

When the collector of taxes at San Ignacio demanded a tariff tax of 65 per cent. on certain supplies Bartholow had purchased for the mines, he, in a letter dated March 17, 1866, firmly replied as follows:

> If such a tax as this is imposed upon me I desire General Coronna to send here an officer empowered with written authority to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, *put my goods and property under the protection of the flag of the United States, and*

from under it I intend they shall be taken. **At the same time I shall offer no other resistance to any legal officer of the Mexican Republic than to enter my** *solemn protest against it and appeal to my Government at Washington.* **(P. 215.)**

In a letter to the company dated April 10, 1866, Bartholow says, referring to the above demand, "I inclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of $3,000 or $4,000, as was demanded, *we only paid about $30*, and there was no necessity of troubling General Coronna with the matter." (P. 219.) Was it this kind of oppression that drove La Abra from Mexico?

There is great significance in what De Lagñel says about Exall's *dreaded* Soto. Although he was a justice of the peace at Tayoltita, De Lagñel says, "I did not know the man except to pass him and bow to him." (P. 500.) His interferences with the business of the company must have been peculiar! Indeed, the witness says he "*saw no exhibition of authority from one year's end to the other*" and had little if any occasion to see the civil authorities. (P. 511.)

When Soto bowed to witness it was with "a countenance that indicated no love," but he "*never harmed*" witness "*in any way.*" (P. 512.) There is a world of significance in the witness's surmise that the cause of this apparent dislike was that paying the miners in *goods* instead of *ready cash* cut into the

profits of the tippling shop and the gambling table. (P. 512.)

These little straws show the direction of the wind!

So far from De Lagñel being hunted and persecuted, he tells us that he relied on himself for protection (p. 512), and made his journeys alone from the mines to Mazatlan and back again over a wild, mountainous country. When asked how the Liberal officers treated him and the company, he replied, "*Always well.*" (P. 488.) He says, furthermore, that the only instance of military interference with the company was the Valdespino incident, and that then the military did not come nearer to the mines than San Dimas. Nor was there any interference by the civil authorities save by a detention of the company's hired pack trains, because of witness's failure, through ignorance, to pay certain interstate duties. (P. 490.)

There is nothing in the depositions of De Lagñel, Sundell, and Torres, who were intelligent, without bias, and living on the spot, to show that the disorders that occasionally occurred among the miners at Tayoltita, as they will occur in every mining region, had their origin in hatred of Americans in general or La Abra in particular. They took their beginning in Soto's tippling shop, or in the stoppage of pay and the consequent stoppage of the diversion of Soto's gambling table, as occurred once when the occupation of Mazatlan by the Imperialists and

French prevented the company from obtaining money from its bankers there. Once also there was some muttering, not traceable to the causes mentioned, as if the beginning of a mutinous demonstration, but it came to nothing. (P. 515.)

De Lagñel nowhere intimates that the company was in danger from the hostility of the authorities or the people.

Sundell, who was on familiar terms with Exall, completely explodes his story of the hostility and persecution of Mora, Olvera, and Soto. The witness was interrogated and answered as follows:

147. Question. Were you acquainted with the gefes politico, Marcus Mora, Macario Olvera——

Answer. I knew them all.

148. Question. What were their relations, so far as you know, with Mr. Exall, the superintendent of La Abra Mining Company?

Answer. So far as I knew they were of a friendly nature.

149. Question. Did you ever hear of any trouble between them and Mr. Exall?

Answer. Never.

150. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. Impossible.

151. Question. Did your company ever have any trouble with those officials?

Answer. No, sir; never.

152. Question. Did you know Guadalupe Soto?

Answer. Yes, sir; I knew him.

153. Question. What was his position?

Answer. Occupation, do you mean?

154. Question. Yes; his occupation.

Answer. Storekeeper.

155. Question. Did he hold any official position?

Answer. In Tayoltita?

156. Question. At Tayoltita.

Answer. I don't remember; he might have been justice of the peace.

157. Question. What were the relations between him and Exall?

Answer. I never heard anything particular except good relations.

158. Question. Could there have been any serious trouble between them without your hearing of it?

Answer. No, sir. (P. 525.)

It stands to reason that if these officials, with two of whom, Mora and Olvera, he talked frequently (pp. 528, 529), had been breathing threatenings and slaughter against La Abra, Sundell, in his frequent intercourse with Exall and in his visits to the haciendi of the claimant, would have heard something of it. This witness furthermore says that no armed attack could have been made on the company's hacienda without his hearing of it. (P. 526.)

But the constant indulgences granted to La Abra by the Mexican authorities to prevent lapses of the company's rights under the mining laws afford convincing proof that what Exall and other witnesses say about the hostility of those authorities is entirely false.

The tell-tale letter-press copy book shows how frequently the company was a suppliant for the indulgence called a *proroga* or *amparo*, and how readily it was granted.

In his letter to De Lagñel, just before leaving the mines, dated May 5, 1866, Bartholow says:

> I also inclose a memorandum of the mines, their names, location, claimed by the company. All that we are not now working are under "*prorogue*" *until July, when you should make application through Don Angel Castillo de Valle, Durango, for an extension of the prorogue.* (P. 224.)

Accordingly, on June 9, 1866, we find the following letter from De Lagñel:

[Translation.]

HACIENDA OF LA ABRA SILVER MINING COMPANY.

June 9, 1866.

Mr. JESUS M. GURROLA, *Gavilanes:*

SIR: As the term granted to the company I represent for the protection of the unworked mines of their property is to expire in a few days, on account of notorious and well-known circumstances, and as I do not see any hope yet of perfecting things, I have thought necessary to ask for an extension of six months, for which I herewith inclose the necessary petition, and request you to take the trouble to attend to it in due form and to return it to me as soon as it is convenient, sending me at the same time an account of the expenses which may occur, so as to pay them at once.

Excuse the liberty I take in troubling so much an unknown person, but be sure of the friendship of your most affectionate and sincere servant.

J. A. DE LAGÑEL.
Superintendent La Abra S. M. Co.

(P. 228.)

On July 13, 1866, De Lagñel wrote a letter of like import to the same person, with a view to an "extension of the time for w orking the mine Promontory." (P. 234.)

In his letter to the company dated August 16, 1866, De Lagñel says: "Up to August I had been working La Luz and El Cristo mines, *the others being under porogue until January next.*" (P. 239.)

On August 31, 1866, De Lagñel's clerk writes Señor Gurrola, acknowledging receipt of the prorogues previously asked for. (P. 242.)

In his letter to the company of September 7, 1866, De Lagñel remarks that the "Promontorio"

mine, "as all other mines we hold, *is secured by prorogues newly obtained.*" (P. 244.)

By a letter dated December 16, 1866, we find De Lagñel applying for new prorogues, and using this significant language: "Herewith I send new applications, *drawn in accordance with the prefect's instructions, and trust they will meet his approval.*" (P. 255.)

When asked if he ever had "any trouble in getting these extensions," De Lagñel replied: "*I don't remember any. I think they were granted without any trouble.*" (P. 511.)

On October 14, 1867, Exall wrote the president of the mining deputation of the district of Sandimas as follows:

[Translation.]

Mr. ANTONIO ARMIENTO:

SIR: *In compliance with your instructions*, I accompany you the petition for the "amparo" of the mines of Anayan, Sauz, and Talpa, all of which are included in the same dependencies, and I inclose you, at the same time, $6 for the expenses of the document, including the stamped paper, on which you will do me the favor to write the petition, as there is none here of that kind.

I hope that you will send me the document by the first opportunity, either to me at Tayoltita or to the care of Mr. D. I. G. Rice, at San Dimas.

I am your affectionate and sincere servant,

CHARLES H. EXALL,
Acting Supt. La Abra S. M. Co.

TAYOLTITA, *October 14, 1867.*

(P. 276.)

How absurd the pretension, we repeat, that the Mexican authorities were constantly on the alert for an opportunity to drive La Abra from the country,

when they were *all the while granting indulgences to prevent forfeitures of its mining rights!*

A TRANSFORMATION.

Exall, like other mendacious witnesses, is betrayed by a defective memory.

Guadalupe Soto is constantly referred to by Exall as one of his *bitterest foes*, and as one of the chief architects of the company's ruin. In his rebutting testimony he says:

> Said Judge Guadalupe Soto, and the prefect, Marcus Mora, encouraged this spirit among the men, and *incited them to riot* by telling them, falsely, that the company came there to annex Durango and Sinaloa to the United States, and they ordered all the men whom I did employ to quit work, which nearly all of them did do frequently for weeks at a time, paralyzing the works, and the business of the company, so that I sometimes had but few men at work, and the men who did work had to so manage the same as to deceive the prefect, or keep the fact from his knowledge that they were still working for the company; and on one occasion, Aquilino Calderon attempted, notwithstanding this order, to work at the mine "El Cristo," but thereupon he was by force of arms compelled, by said judge and prefect, to quit the company's service, and they, the said Prefect Mora and *Judge Soto infused the same hostile feeling into the whole mass of workmen*, and said Mora and Soto issued the written communications or orders to me, which are referred to in said defensive testimony, requiring me to employ all the men, and work the mines as Soto and Mora directed, or to abandon them to the people to be worked by themselves as they pleased; but those written orders *were mild compared with verbal orders given me by said officials, from time to time*, and finally the last order or warning by the Prefect Olvera, notifying me to abandon the works and leave the country, which forced the abandonment of the company's works and mines. It was but a foregone conclusion with said authorities, as from their words and actions I felt, weeks before that time, that the abandonment was inevitable. The local authorities and other politicians urged the workmen to hostile demonstrations, and at one time they charged upon the hacienda and broke in the doors. This state of hostile feeling continued, and said turbulent characters con-

tinued to harass the company in its operations, and when, soon afterwards, Macario Olvera, Soto's son-in-law, became prefect, matters grew rapidly worse, so much so, that only a few nights before I escaped, an attack was made upon the hacienda of the company by some men headed by said Prefect Olvera himself, as I was informed the next day by one of the friendly Mexican workmen, a muleteer. They were armed with pistols and machetes but as I had been previously warned of it by said friendly muleteer, I was in some measure prepared for the attack, and after they discovered my position and strength, they retired for that night. *Soto* and Olvera both told me that *unless I employed all the men who were out of work in that district, which they knew was utterly impossible, that they would let the working people drive the company out of that district and give them the mines to work as they pleased.* Their *verbal* orders to me were *much more pointed, emphatic, and hostile,* than anything they wrote me. They were *working openly and covertly to get us out,* and to escape as much of the responsibility as possible for so doing. (Pp. 153, 154.)

Again he says (p. 156):

Said Rodriguez was a common laborer, and was discharged by me for dishonesty, and, of course, he became very hostile, and was one of those who made the night attack on the hacienda, with other armed men, and *amongst that number of violent characters,* I recognize the names of no less than four of these Mexican witnesses reported here by Cipriano Quiroz, viz: Bartolo Rodriguez, *Guadalupe Soto,* Cepomucino Manjarrez, and Victoriano Sandoval.

And, at 157, he uses the following language:

It was known publicly that Cipriano Quiroz, before whom this slander is said to have been stated, was one of the bitterest foes of all Americans in that district, and in connection with the Laveagas—Miguel and Arcadio, father and son—Marcos Mora, *Judge Guadalupe Soto,* Marcus Olvera, the prefect, and some federal officials at Durango, *was notoriously at the bottom of the conspiracy, and the expulsion of the company.*

The claimant's witness, Bissell, also deposes (p. 45), that "Guadalupe Soto was known as a bitter enemy to said company," referring to the Abra Company.

Now for a startling transformation! In about seven months after the cruel, terrifying treatment

which, it is claimed, is evidenced by Exhibits V, W, X, and Y, namely, on February 7, 1868, and a few days over a month before Exall's so-called expulsion from the mines on March 20, 1868, we find him and the savage Guadalupe Soto treating and transacting in the most fraternal way, as witness the following document:

> The American, Charles H. Exall, as the representative of the mining company of the Abra, and D. Guadalupe Soto, enter into the following agreement:
>
> Mr. Exall grants permission to said Soto, for the period of six months, counting from this date, to use the mining works (beneficio de metales) on the land formerly known as the Guadalupe estate of Tayoltita, in the mining district of Tayoltita, on the following conditions:
>
> 1stly. Mr. Soto pledges himself not to destroy nor injure the structures and implements which are at present to be found in said mining land, but, on the contrary, to take care of the same as best he may, in behalf of Mr. Exall.
>
> 2dly. At the end of the aforesaid six months, Mr. Soto will deliver said land to Mr. Exall, *or his successor*, with all the improvements and implements which said Soto may have introduced in it, always recognizing him as the proprietor of the company of the Abra, without charging him anything for the improvements and works which he may have introduced upon the land aforesaid during the period mentioned, as, in the like manner, Mr. Exall should not exact anything for rent.
>
> This agreement does not prevent the contracting parties from entering into a new agreement, extending the term or any other agreement satisfactory to both parties. San Dimas, February 7, 1868. (Signed) Guadalupe Soto, Charles H. Exall. (P. 132.)

And, what is more, this agreement was *extended* for a time not to exceed seven months, on August 7, 1868, by James Granger, who was left in charge of the mines by Exall when he *fled*, as witness the following:

> We, the undersigned, the parties to the foregoing contract, mutually agree by these presents, that said contract shall con-

tinue in all its force and effect, and upon the same terms and conditions, for another term, which shall not exceed seven months, as follows: Beginning on the 7th of August of the present year, and ending on the 7th of March, 1869.

To conclude this, we have signed this day, August 7, 1868, appending signature and seal. (Signed) Gaudalupe Soto, James Granger. (P. 132.)

Granger, identified with La Abra, and the intimate and trusted friend of Exall, remains behind in peaceful possession of the company's property, and the turbulent populace, that, as Exall tells us, thirsted for his blood and were eager to take possession of the mines, do not hurt a hair of Granger's head or interfere with his possession in any way! So entirely to the contrary was the situation that the cruel Gaudalupe Soto, the father-in-law, too, of the wretch Olvera, humbly solicited from Granger an extension of the license to occupy the company's hacienda previously granted by Exall! Soto was in possession; *why did he not just remain there?* for, according to Exall, there was no law to put him out. Besides, if there was a *complete abandonment of the property* by La Abra, of what avail could Granger's extension be? The thing is absurd on claimant's own theory.

It is true that Exall tries to prove (p. 152) in his rebutting testimony, which, by the way, he gave *after carefully reading all the depositions of the defense*, as he tells us (p. 150), that he executed this paper merely to "*conciliate*" Soto, and through him his son-in-law, Macario Olvera, *the terrible* (p. 152), but this thoroughly untruthful witness did not suspect

that he would be confronted in the case now pending with his letter of May 8, 1868, to Granger, which he concludes by sending his "*kind regards * * * to Guadalupe's family generally, Cecilia, and the Tayoltitians generally.*" (P. 288.)

In less than two months after his expulsion from the mines Exall is calling his persecutor, Soto, *familiarly Guadalupe* and sending "*kind regards*" to his family. This is the same Guadalupe Soto whom he speaks of in his second deposition (p. 156) as having been "among that number of *violent characters*" who made "*the night attack on the hacienda*," and also (p. 157) as one who "*was notoriously at the bottom of the conspiracy, and the expulsion of the company*," and who infused "a hostile feeling into the whole mass of workmen" (p. 154) and "*incited them to riot*" (p. 153).

And the Cecilia to whom he sends his "kind regards" in the letter above referred to, and who was the step-daughter of Judge Soto, is the same person whom he afterwards characterizes, in his second deposition, as "an abandoned woman of vicious and vulgar habits, and unworthy of belief under oath" (p. 159), she having, in the meanwhile, testified in behalf of Mexico.

What are we to think of a case whose chief corner stone was the testimony of such a witness as Exall? Steeped in perjury as he is, how can La Abra be innocent?

There is no room for doubt that La Abra's representatives in Mexico pursued an aggressive course of conduct, and presumed upon the respect and prestige incident to citizenship of the United States. Like Mrs. Bull, when visiting France, they looked down upon the Mexicans *as so many foreigners in their own country.* We have no doubt the witness Rodriguez spoke the truth when he said that the "Americans at the mines * * * *have always looked down in scorn upon the Mexicans employed under them, imposed tasks upon them not allowed by law,* and have refused to allow a Mexican miner the same pay for the same work as they did to American miners." (P. 114.)

Certainly it was very bold, not to say inimical, in the company to carry matters with so high a hand in a community where the authority of the law was much weakened by existing disturbed conditions. Certainly it was to be expected that unfriendliness, together with the usual harmless threats and maledictions to which it gives vent, would result from the company's arrogance and aggressiveness; but it provokes a smile when we are asked to believe the story of the company's forcible *expulsion* from its property and the headlong flight for life of Superintendent Exall and *his unnamed American friends*, leaving behind them the mines, piles of rich ores worth thousands and thousands of dol-

lars, and expensive machinery; in fact, leaving everything *open to anybody that chose to take possession;* for, it must not be forgotten, the contention is that Exall's abandonment was so complete and the outlook so desperate that he left no one behind, not even Granger, with authority to maintain the company's possession. We must, indeed, go to the pages of Munchausen to find a case parallel to this. And what remarkable *coincidences*, too, are these, that this so-called violent expulsion took place JUST AT THE TIME WHEN THE MINES HAD PROVED A DEAD FAILURE, as we shall show they did further on, and just at the time when law and order had commenced to be reestablished in Mexico, and just at the time the machinery, etc., of the company was completed and perfected and put in operation. (P. 156.) Poor Exall (*not to omit another striking coincidence*), when he reached Mazatlan in his so-styled flight, had to borrow $250 from his friend Mr. Peña to defray his expenses to New York, which, by the way, did not look much like he was in flight from a bonanza where, "early in 1868," and therefore shortly before his *flight*, he beneficiated some 20 tons of rich ore, *with a cash result of 17,000*, of which sum, however, strange to relate, *not enough remained in hand on March 20, 1868, to get him out of the country.*

PRESTAMOS OR FORCED LOANS.

While there is no distinct claim made in the memorial under this head, still much importance seems to be attached to it, as having, we presume, an aggravating inflammatory tendency. It is, however, remarkable that no such claim has been advanced; that is to say, *if we are to believe the claimant's testimony.* W. G. S. Clark, one of the principal witnesses, for instance, says:

> Deponent further says that the machinery shipped or forwarded to said company at Tayoltita, was a very large 10-stamp mill, and all the necessary machinery thereto belonging; that said company was frequently compelled to pay forced loans, or "prestamos," levied upon their said property, machinery, and supply trains, while the same were passing through from Mazatlan to their mines in Tayoltita, Durango, to the knowledge of deponent. But although deponent *was cognizant of many of said forced loans*, while he was so engaged in the work of forwarding said machinery and supplies, still he *can not recollect* the several sums so exacted and paid, nor the names of the officers of said army who made those exactions, with sufficient certainty to be able to testify on the subject of forced loans, satisfactorily to himself or to said company, *except in the cases already named.* (P. 63.)

To which might be added other testimony of like tenor, if important. (See Granger, p. 47.)

The only case of the levying of a forced loan which the witness identifies is the so-called exaction of $600 made by Colonel Guerra, who, it is said, detained a train, loaded with the company's property and under witness's charge, until the amount was paid by him.

The witness mentioned another occurrence as a case of *prestamo*, as follows:

> And deponent further says, that he knows of other abuses of said company by the military authorities aforesaid; that in the early part of 1866, an employee of said company, whose name, deponent believes, was George Scott, (called "Scottie"), who was on his way from Mazatlan to the works of the company in Durango, was met in the road by an armed party of the said military, between Mazatlan and deponent's residence in Camacho, and said armed party of troops, of the Republican army of Mexico, did, by force of arms, take from said Scott, or "Scottie," about twelve hundred out of three thousand dollars in gold coin, ($3,000), Mexican ounces, (187½ ounces), which money belonged to said "La Abra Silver Mining Company," and was being transported to said company by the said "Scottie," who appealed to deponent to visit, with him, the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headquarters with the said "Scottie," but was informed by the commanding officer that he could not give up said money. After said "Scottie" had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted, and returned to report the facts to his company at Tayoltita. Said General Guerra denied that he knew of the whereabouts of said "prestamo," or forced loan, and said general stated to deponent, in this conversation, that his army needed all the supplies that could be found anywhere, and, in substance, he said it did not matter in whose possession he should find supplies, or anything else actually needed by the army, that they must be taken, and that the same should be paid for at the close of the war then pending.
>
> Deponent charged his memory with the promises of remuneration for the so-called "prestamos," as deponent had suffered in that way, to a considerable extent, by the orders of the same authorities, and by other exactions from officers of the same army. (P. 63.)

This instance, however, was a simple case of highway robbery, and the witness's story of a prestamo is shown to be *utterly false* by the since-discovered official report of the occurrence made to the com-

pany by Bartholow, as superintendent, on April 10, 1866, from which we make the following extract:

> In consequence of the unsettled state of the country and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time: yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1,000 per week, and of course all that the proceeds of the sales of goods did not supply, had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all came through safe except in one case. This occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1,000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about 20 miles out from the port, near the town of Comacho, *six or eight armed men sprang into the road and with their guns leveled upon him forced him to dismount, and robbed him of $1,178 in money*, his pantaloons, and boots (the latter, however, being No. 12, were too large for any of the villains, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also at the same time opened a correspondence with General Corrona through the prefect, Col. Jesus Vega, at San Ignacio, *who, by the way, is, I think, one of the most perfect gentlemen I have met in the country*, and I am of the opinion that but for the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss (pp. 219, 220).

What Bartholow thus wrote he afterwards confirmed in his testimony. (P. 171.) So the company's important witness, William G. S. Clark, is again shown to be unworthy of belief. A boon to

truth was that tell-tale letter book! If the other witnesses for the claimant are as unreliable as this one, and we think they are shown to be so, *they have wisely sought safety from exposure in generalities.*

The next case of a so-called *prestamo* is thus referred to by Granger, who says:

> Said company was also forced to pay *prestamos.* A letter was received by Colonel de Lagñel, superintendent of said company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed "Jesus Valdespino," which came into my possession as clerk of the company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked "Exhibit Z." This letter demands $1,200 from said company for the support of his forces, under his command. (P. 47.)

In his third deposition Granger says "he does not know whether the company paid it (the *prestamo*) or not." (P. 112.)

Colonel Valdespino's letter, referred to by Granger as Exhibit Z, and being, with Exhibits V, W, X, and Y, *the only papers La Abra has preserved*, is as follows:

SAN DIMAS, *July 27, 1866.*

To Col. J. A. DE LAGÑEL.

DEAR SIR: Both Mr. Laeuz and the gefe of the partido, will inform you of the commission with which I am charged, by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command; but, informed as I fully am, of the injury which my continuance in the district would cause to its residents, and *particularly those having large business and property*, in the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interest of your business, and upon the sole condition that *the residents of the district furnish me with $1,200 for my departure.* I am confident that I take this step as the least burdensome, because, if I remain here, I must obtain means wherever they may be found, but as I have before stated, my purpose is to the individual guarantees which the laws accord to the people.

I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefetura of the partido, on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant.

(Pp. 54, 55.) JESUS VALDESPINO.

Exall also refers to this Valdespino business in his answer to question 16, in rebuttal, namely:

Question 16. With regard to the forced loan made by the company to Jesus Valdespino, for the support of his troops, state whether or not the whole or any of it was paid by you; if not, by whom was it paid, and when?

Answer. It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel de Lagñel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel de Lagñel, and, *to the best of my recollection, the whole amount, $1,200, was required of and paid by said* De Lagñel. There was a small loan, or "prestamo," previously required by Valdespino, of, I think, $500, and that was paid by contribution, and with much trouble, the company paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made, and failed, and Valdespino then fell back upon the company, as being most able to pay, and completed the payment. The Mexican witnesses must refer to the small loan, if they contributed anything to Valdespino, which I never heard of before. Those laborers were too poor to contribute, and I don't believe the story. (P. 154.)

It will be observed that Valdespino requests $1,200 from "*the residents of the district*," and yet Granger speaks of it as a demand on the company, which, "*it is needless to say, was complied with.*" (P. 47.) It is true, he says in a subsequent deposition that he does not know whether the company paid it or not. (P. 112.)

But Exall swears that, "to the best of my recollection, *the whole amount, $1,200, was required of and*

paid by said De Lagñel" (p. 460), *which he knew to be false*, for De Lagñel satisfied Colonel Valdespino's request by sending him *two pieces of mohair and two pieces of bleached cotton*, and declined to send money, because he had not enough to meet his "many and constant expenses." It may be asked, if this was not exceedingly cavalier treatment, if there prevailed the reign of terror described by Bartholow, Exall, and others?

The following letters from De Lagñel, which are another contribution to truth from the letter book, and which he identifies in his testimony and declares to contain the truth (De Lagñel pp. 479, 480, and pp. 236, 237), show, beyond a doubt, that Exall swore falsely when he said that "*to the best of my* [his] *recollection, the whole amount, $1,200, was required of and paid by said De Lagñel.*"

HACIENDA OF LA ABRA, *July 28, 1866.*

To the Gefe Politico of the San Dimas Mines:

In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith.

I send you part of the articles I have and which you asked me for, hoping that they be useful and acceptable to you.

As regards the cash I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the necessary amount to defray my many and constant expenses.

I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Colonel Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mahom [mohair]

and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, *in order that it may serve me as a voucher to the company I have the honor to represent.*

In conclusion, permit me to add that it is very strange to me that the total amount of the tax being $1,200 the share allotted to the two American companies should amount to half that sum, when there are in the district several residents who have considerable property.

I am, sir, your sincere servant,

J. A. DE LAGÑEL.

HACIENDA OF LA ABRA, *July 28th, 1866.*

Col. D. J. VALDESPINO, *San Dimas:*

SIR: Your favor of yesterday informs me of the sad situation in which you find yourself for the lack of resources and of your intention to procure them preparatory to leaving the district.

Understanding the great need that you are in and considering, as you yourself state, the many evils that we would suffer if you should bring your forces here, I do all I can to overcome the difficulties, and I have sent to the political chief of the district two pieces of mohair and two of bleached cotton, those being the only things among the necessary things mentioned which I have.

It is impossible for me to contribute with money in order to provide you with what you need to-day.

Be pleased to consider that our reducing works are not complete, and therefore unproductive, without reckoning the many expenses that we yet have to make, the proximity of the rainy season, the scarcity of money, and the abnormal political situation, which can not but cause us serious damages.

I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will.

I suppose that having contributed with what I can I may, as a matter of course, resume my work without fearing the interruption that would be caused by the arrival of armed forces.

I am, sir, your attentive and sincere serv't,

J. A. DE LAGÑEL.

And to show how entirely unlike the "forced loans" mentioned in claimant's evidence this Valdespino occurrence is, we give in full Valdespino's letter to the political chief of the district of San

Dimas, produced by Mexico, asking him to make an assessment or requisition on the people of the district for the relief of his suffering command, together with an official certificate accompanying the same, and confirming the statements contained in the above-quoted letters of De Lagñel as to the character of the settlement with Valdespino:

REPUBLIC OF MEXICO.

Political Bureau of the District of San Dimas:

This bureau having been made acquainted with the contents of your note of the 18th of last month, I have to say to you that, having *searched the archives of* THIS bureau, under my charge, for some data relative to the loan of $1,200, which the owners of the "Abra" assert to have been imposed upon them in the year 1866, by the officer in command, Jesus Valdespino, by agreement with the political authority of this district in said year, I have found a document which reads verbally as follows:

E. B. United Brigades—Brigade of Durango—2d Section—Teniente colonel in chief.

The extreme want which the force under my command is suffering, with which I have received superior orders to come into this district, to which purpose, and in order to sustain said force, I have had conferred upon me sufficient powers to procure means for the maintenance of the same, and of the other forces which I am to organize; but in view of existing circumstances, and being also satisfied that the district can not, without much inconvenience, afford the means which I find it indispensable to procure, at all hazards, in fulfillment of the duties I have to discharge, with this object in view, therefore, and in order that the people hereabouts may not suffer greater burdens than would be occasioned by my remaining over night, I have determined to take up my march as soon as possible; and in order to accomplish this, I want means, and I confine myself to what is absolutely necessary; thus then acting in conformity with the powers conferred upon me, and in consideration of what has been stated above, you will levy upon those persons in best circumstances, of this district, and of the villages and estates appertaining to the same, the sum of ($1,200) *one thousand and two hundred dollars*, which they will pay within the space of four days, counting from to-day. I should desire the political authority not to levy any contribution or loan, and it is painful to me to proceed

in this manner, although compelled by the stringent character of my duty. Although determined to withdraw, I wish every good to these people. I strongly urge upon you that the collection of this sum shall be made with the greatest possible care and equality, and of accord with a commission which you will name from among those that are best informed, which commission shall be presided over by the head of that bureau. I avail myself of this opportunity to tender you the assurances of my consideration and distinguished regard.

Independence and liberty.

San Dimas, July 27, 1866.

(Signed) JESUS VALDESPINO.

To the political chief of this district, present.

And in view of the fact that this bureau is not in possession of more circumstantial dates upon the subject in question, it has been determined to forward these to D. Ygnacio Quiros, who, at that period, was political chief of this district, who, being present, and having read your communication, says that he does not remember well what the Americans of Tayolita gave on the occasion, when Valdespino was in this mining district, but that it could not have exceeded two hundred dollars at the utmost, and this was given in the shape of goods, for although this was in the nature of a loan, yet Valdespino, taking into consideration the then existing circumstances of this mineral district, he confined himself to request that they should contribute, voluntarily, whatever they pleased for the support of his force, which was done by making the shares as equal as possible in this mineral district, which was in conformity with the sum mentioned; that he does not remember the amount, because he made no note of the fact, and that it has therefore not been repaid, and that he does not know whether this Valdespino was authorized to raise loans. This he will say: That when Santiago Papasquiero came to this point, he was governor of the State, and D. Genaro Leyoa, as secretary, wrote to this district, approving of what had been done in behalf of Valdespino. This is all the information that this bureau, under my charge, can give you.

Independence and liberty.

San Dimas, July 19, 1872.

(Signature) ARCADIO LAVEAGA.

To the judge of the 1st Instance of the district of San Dimas, present.

(P. 127.)

Turning now from this contemporaneous documentary evidence, let us see how the Valdispeno

incident is treated by De Lagñel in his deposition, from which we make the following extract:

> Question. There is a letter in the press-copy book concerning what is called a prestamo or forced loan, levied in Tayoltita by Colonel Valdispeno during your superintendency. State the circumstances of that, as far as you know.
>
> Answer. I received from the civil officer in San Dimas, and also at the same time from Colonel Valdispeno, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry—Liberal cavalry—destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one-quarter upon us, and the other half was to be borne by the citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, *and didn't intend to give it even if I had it.* I was advised to do so, or they would come there and rob the place, as it was said to be the habit.
>
> Question. By whom were you advised?
>
> Answer. I was advised by a man named Norton, who had married a Mexican wife.
>
> Question. The same man who was your clerk?
>
> Answer. Exactly. He had been in the Liberal service. He said to me, "It will be to your interest to do it; they will sack this place if you don't." I said, "I am not going to do it, for the good reason that I haven't got the money, in the first place, *and if I had I wouldn't do it.*"
>
> Question. What was the result?
>
> Answer. I sent them a few goods—some stuff they wanted—blankets and hats. I sent them some goods—cotton goods—and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, *because the mines had never turned out a dollar.* They wrote me an acknowledgment, and sent a receipt for the goods and *courteous acknowledgments. That was the end of it.* (P. 488.)

"*That was the end of it!*" How pregnant those words!

The face put upon this Valdespino matter by Granger and Exall in their depositions is thus

demonstrably false. It was not the mailed hand of military power, *but the hand of supplication*, that Valdespino stretched forth, beseeching assistance for his suffering soldiers. To give a different version of the transaction was criminal in Granger and Exall.

The remarks of Commissioner Zamacona on Valdespino's letter to De Lagñel are sufficiently instructive to have a place here. He says:

> The translation of this document, which is on page 53 of the printed book and was made by the claimant, is not sufficiently correct, and leads to the formation of an erroneous judgment. In addition to what has been already said as to the translator's having omitted to insert the words "private correspondence," which immediately changes its character from an official order to a friendly letter, a most important error was committed in the translation. The text of the last paragraph of the letter says:
>
> "Espero pues que Vd. pese con atencion mis razones y que convencido de ellas, hará cuanto esté de su parte, para dar el lleno al impuesto que la gefatura de este partido asigna á ese punto."
>
> This was translated:
>
> "I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefatura of the partido on your place."
>
> Valdespino did not ask his friend Lagual [Lagñel?] to complete anything, nor to complete the contribution imposed on the locality where he was. What he did was to state the situation, explain that by the sacrifice of twelve hundred dollars the people of the district might free themselves from the inconvenience of having a military force in their neighborhood, which necessarily had to live off of the country, and begging him, in view of all this, on his side, to do what was possible, in order that the place where he resided, or the mines (one only among the many which the district embraces, as the Spanish text says) should carry out the idea or plan which was recommended.
>
> But laying aside this circumstance, the character of Valdespino's communication will be still better understood if the other one which he addressed to the gefe politico of the place,

on the 27th of July, 1866, be examined. This is official in its character, is stamped, sealed, and countersigned, and translated into English on pages 158 and 159 of the English book.

In this communication Valdespino, after explaining that he is compelled to support and feed his troops, adds that the political authority has no wish to levy and [any?] tax or exact any loan. For this reason he had determined to leave the place, and in order to do so he desired to obtain from the people of the district and the towns adjoining, who were in better circumstances, the sum of twelve hundred dollars. This letter is written in the same spirit of moderation as the other letter, and its text, without forcing, shows two things:

First. That in the measure projected by Valdespino there was no intention of violence, or any indications whatever of hostility against the inhabitants of San Dimas; but, on the contrary, it manifested strong evidences of the consideration which officers in the field do not always practice.

Second. That the twelve hundred dollars which was to be collected was not demanded (that is, if it was paid by them) exclusively from the Abra Company, but that it was distributed on all people of means in the district, and on those of the towns and farms embraced in it. But a portion of this assessment could have fallen on the company, and it is not comprehensible why they should have demanded the whole twelve hundred dollars. (Pp. 393–395.)

Again, the witness, Clark, having also given a false account of the Scott or "Scottie" robbery, may we not safely conclude that his labored effort to make a case of *prestamo* of the $600 alleged to have been exacted by Colonel Guerra is unworthy of belief, the falsehood in the Scottie matter being of itself, to say nothing of other matters, sufficient to blast the whole deposition.

That appellant has not produced from its files a single voucher to prove a forced loan is a strong circumstance to show that it did not suffer from exactions of that kind, and the danger of fabricating the necessary documentary evidence no doubt,

accounts for the failure to put in a claim on that head. It can not be presumed for a moment that money or property was taken by the Mexican authorities for public purposes without giving the owner a receipt or voucher of some kind. It will be remembered that De Lagñel, in his letter of July 28, 1866, to the Gefe Politico, asks him to furnish a receipt for the value of the merchandise sent to Valdespino, "*in order that it may serve me as a voucher to the company I have the honor to represent*," and so it must have been in every such case, unless we are to assume arbitrarily that these public authorities acted like bandits in making requisitions upon the people to meet unforeseen emergencies.

The absence of vouchers or receipts to show the exaction of money or property by the Mexican authorities reminds us that whenever a document is deemed necessary to support the claimant's case it is produced. Granger, it will be remembered, apologizes for his inability to state the exact amount of money paid out by the company for improvements by saying that "the hacienda has long since been sacked of books, receipts, invoices, and other papers furnishing the necessary data upon which to make anything like an exact statement on the subject" (p. 50), yet when it was deemed advisable to prove the facts stated in Exhibits V, W, X, Y, and Z this witness had no difficulty in producing those documents. Of Exhibit X he says: "I have

filed it away with some other papers of the kind, and subsequently turned it over, *together with two or three others from Judge Guadalope Soto*, to the attorney of said La Abra Company" (p. 49). Of Exhibit Z the witness said that it came into his possession as clerk of the company and "*has never since its receipt passed out of my* [*his*] *possession.*" But to this day, we repeat, we have no explanation of the failure to produce the first of the Mora-Soto series, being Soto's letter of complaint to Mora. *Can we doubt that it was suppressed?*

La Abra had cast Granger off; at least such is the claim. What, then, was La Abra to him, that he should have taken so particular care of papers that could not have had value in his eyes until after that great purveyor of evidence, Alonzo W. Adams, got hold of them? This is, indeed, so remarkable that, taken in connection with Granger's entire want of credit as a witness, we are warranted in concluding that his possession of the books, papers, etc., in the office at the mines was not at all disturbed by the hand of violence and rapine without resorting to the after-discovered evidence to establish the proposition.

Bartholow testifies that "the amount of cash 'prestamos' so levied and enforced during my said superintendence *amounted to a little more than $3,000*" (p. 171), but will anyone say that a conclusion can be drawn from this and the other evi-

dence in the case that "prestamos" were even a factor in La Abra's so-called expulsion? The single circumstance that no claim for indemnity is made on that head is sufficient to show that the subject does not deserve the court's serious consideration.

The Valdespino affair, of which so much is made, is as far from supporting the theory for which it is used as the Perez affair, and assuming these instances to be the strongest the claimant can adduce, as we undoubtedly may, the case no longer presents a serious face, and the conclusion is forced on the mind that it is the result of fraud.

But supposing the books, papers, vouchers, etc., left in Granger's hands by Exall, when his so-called *flight* took place, were stolen or destroyed, is it possible that the company's office in New York did not contain all necessary information about prestamos? What became of the contents of that office neither the pious Collins nor anybody else can tell; at least such is the pretense, *and no one connected with the company has troubled himself to give a theory about the matter.* In this, as in so many other particulars, the claimant leaves the court to grope in the dark; and the only way in which the court can escape from the embarrassment of the situation is by concluding, from the absence of the usual documentary proof, that the evidence as to prestamos is not entitled to belief.

HOW CLAIMANT'S EVIDENCE WAS PREPARED.

The evidence laid before the commission by the claimant is entirely discredited by the conduct of those engaged in its preparation.

Alonzo W. Adams, who was employed to get it up, was sent by Bartholow from St. Louis to the company to be put on that work, *without any previous consultation with the officers of the company*, which Garth says he regarded as a strange proceeding, as it clearly was.

Here is Garth's account of the matter:

> Question. How did General Adams happen to be in your office that day when he met Green there?
>
> Answer. He came there with a letter from General Bartholow, of St. Louis. He came there with a letter of introduction from General Bartholow a short time before, in which he said he had employed General Adams to go out there and take the testimony, and General Adams produced the letter. *I had never seen or heard of the man before*, and we had to act in conjunction with the Western stockholders, who were more numerous than those from the East, and obtain their cooperation. It was supposed they would not be capable of raising sufficient funds to employ the lawyer or party, whoever went there, to take the testimony, and expenses of it.
>
> Question. Did Bartholow employ Adams to take testimony without any communication from you or the company in New York?
>
> Answer. He did, and to my surprise. I was very much surprised, because I had intended when I talked with them of sending another party.
>
> Question. Did the matter stand on Bartholow's appointment, or was there a contract between the company and Adams?
>
> Answer. There was a contract between the company and Adams, which *must be of record here, of course.*
>
> Question. Where was Bartholow at the time this thing took place?
>
> Answer. He was in St. Louis. He was in a bank out there. He had a banking establishment there. He was at the head of that banking establishment.

Question. Did he explain how he came to appoint Adams without consulting with the company?

Answer. He thought he was a good man and had agreed to employ him. (P. 718.)

So Adams was employed, and went to work, and his career in the case justifies the suspicion which his employment by the unscrupulous Bartholow was calculated to excite.

To form an estimate of the sort of character Adams was, we need not go beyond what he says in his own deposition about his failure to get Guadalupe Soto's testimony.

When Adams went down to Tayoltita in 1870 in quest of evidence, he says he found Soto still breathing threatenings and slaughter, so to speak, against Americans coming into Mexico to work mines, and took him and several others to San Dimas to give evidence for the commission before the local judge there. Owing, however, as Adams says, to the dissuasion of this judge, Soto declined to testify at San Dimas, but said he would do so at Mazatlan, and appointed a time to be there for the purpose. But he did not keep his appointment.

The account Adams gives of what Soto would have testified to is as follows:

He unreservedly and proudly avowed it as his present and past opinion that the mines of Mexico ought to and did belong only to Mexicans, and that all Americans ought to be driven out of the country; he admitted, when asked by me, that he, as local judge, had interfered with the company's working of their mines, and the conduct of their business, but claimed that he had rightfully done so by virtue of the orders of his superiors in authority; and he stated and admitted many other like facts

> which were very material to the company's case, and made me desirous that he give his deposition. He was bold, outspoken, and evidently proud of his hostility to Americans and his acts toward said company, and I asked him if he would go over to San Dimas, and state before Judge Milan what he had just said to me in relation thereto, and he replied that he would; and he then repeated that the mines of Mexico belonged only to Mexicans, and he declared, in a boastful manner, that he was willing to proclaim his principles and purposes, on that subject, before any court, or before the whole world. (P. 179.)

It is of course quite absurd to suppose that one in Soto's frame of mind toward La Abra, as pictured by Exall and others, would have played into its hands by tendering himself so readily as a witness to testify on the side of the company's claim against Mexico "before any court or before the whole world," but, waiving that, it is a source of much surprise that neither Granger nor Dana, who accompanied Adams in his expedition to San Dimas in search of evidence, makes reference in his deposition to these remarkable utterances of the judicial tailor, Soto. Adams, who was cunning enough to see the need of some explanation, attempts in a lame way to account for Dana's silence by saying that Dana supposed Soto himself would give a deposition, *which he, Dana, preferred.* Why he, Dana, had any preference in the matter is not intimated. No reason at all is given for Granger's silence. We may be sure, furthermore, that if Soto had made any such declarations, Adams, who lugged into the case everything he thought calculated to excite prejudice against Mexico, would have spared no pains to secure his

deposition before leaving Mazatlan, or, failing that, would have supplied the omissions of Granger and Dana by giving *his own deposition*, as part of claimant's evidence *in chief*, which he could have done at his convenience, anywhere.

The lame excuse for not putting the evidence in as part of the claimant's case in chief and for introducing it in rebuttal, when Mexico could not meet it with other testimony, *is more than suspicious.*

For our part, we believe that Soto told the truth when he said that Adams "did not wish him to testify," forseeing that his deposition would not be favorable. (P. 136.)

With this not very flattering introduction of Adams, we proceed now to show his manner of getting up the testimony which was laid before the Commission.

The witness Matias Avalos in his deposition for Mexico gives an account of the way in which his previous deposition for La Abra (p. 51) was prepared by the American "general," Adams. He says:

> At what point did you make the extra judicial depositions obtained from you by those of the Abra Company which Anastasio Milan, the magistrate of this district, had refused to take when requested to do so? He answered that at this point he made no deposition anywhere; *that he is certain of having made what he considered an extra judicial statement at the port of Mazatlan, in the National Hotel, in the presence of various persons*, among whom he remembers and knew an American called *General*, and one William N. Camacho, and they both questioned him about the arrest of the superintendent of Tayoltita, and he stated how it occurred. (P. 131.)

Again, he says:

From a memorandum he made of his deposition, at Mazatlan, he said that after writing the same down, *at the National Hotel*, the deponent, the General, and William, who lived, and lives at Camacho, *went to another house, where they began writing*, and, *from what he saw, correcting his deposition, and from there they took him to the house of the consul, simply asked him if he swore to the deposition he had made, and he answered, yes.* (P. 132.)

The witness Gutierrez says:

Being asked, Do you know if Judge Anastasio Milan refused to take any depositions at the request of the American, Adams? he replied that, at that time, this American requested Citizen Milan to go with him to Tayoltita, to enter into certain proceedings relative to his claim; and Mr. Milan having done so, he took deponent along with him, who being in Tayoltita, noticed that the aforesaid American, Adams, was taking depositions from some of the laborers, by himself, and without the intervention of the authority of Mr. Milan, taking down said declarations with pencil, on loose pieces of paper: that subsequently, in view of the fact that the authority of Mr. Milan had not been consulted in the least, the latter came to the conclusion that deponent and himself should come away from Tayoltita; that after the expiration of a few days, the aforesaid American returned to this mining district, and called at the house of deponent, requesting the latter to write down something for him, in order that Judge Milan might credit what he had written down in pencil, in Tayoltita; that Judge Milan, in view of these solicitations, summoned those deponents or individuals alluded to by Adams, and these being examined, the result was altogether different from what Adams had pretended, which caused so much annoyance to the latter that he left this mining district; that the above is the truth, and what he remembers at present, which he affirmed and ratified. (P. 136.)

The witness Maria Cecilia Jimenez says:

That what she knows is that an American, called General, and whose name is Alonzo W. Adams, who lately came in company with Mr. Dana, was the person who, solely of his own account, summoned some operatives who were living in Tayoltita, and who had been employed in his works, which operatives, having made their appearance, gave their testimony, the said general writing, and offered to pay them well for the loss of their time, whatever it might be. This was done without wit-

nesses being present, or authority of any kind; that deponent afterwards came to this mineral district, and, being in the hacienda of the Candalario Company, saw that the said general had quite an angry altercation with D. Santiago Granger, and an American named Rafael Martin, which arose on account that these gentlemen did not approve of the declarations that he had taken upon himself to receive on his own account, and besides, because, in their opinion, they were false, it being inferred that the said general wished to take advantage of the ignorance of the deponents, who could neither read nor write; that the result of this altercation was that D. Rafael Martin drove the said general out of his hacienda, saying to him that he did not wish to run the risk of any compromise to the company or to Mexico that would be likely to arise from his unjust pretentions in taking it upon himself to alone receive the declarations of the said operatives. (P. 113.)

It is said, as an aggravating circumstance, that the local judge at San Dimas ordered Adams and Dana and Granger out of the court room where the depositions were being taken, and we have little doubt that if he did he was provoked to it by improper interferences on their part. Nor was it so monstrous in the judge to say that they had no business there as "he could read the interrogations to the witnesses," for the old-established way of taking testimony in chancery, in England, was on interrogatories administered to the witnesses *out of the presence of the parties.*

Turning now to the deposition of Isaac Sisson, who was the United States consul at Mazatlan, before whom Adams carried a number of witnesses to give depositions for the commission, we find irregularities to have been practiced in taking these depositions that were *most discreditable* to both the consul

and Adams, and that lend confirmation to the testimony of the Mexican witnesses just quoted.

It is quite apparent that there was a thorough understanding between Sisson and Adams, and that the former, who seems to have had little or no sense of official propriety, was willing enough to wink at anything the latter might do, and it is no surprise that his Government cut short his career by calling for his resignation. (Pp. 698–699.)

The temper of Sisson toward Mexico appears in the affidavit he made to show the circumstances under which a certain Mexican is said to have snatched from his hands and torn up a deposition which the consul, with great impropriety, had opened and read aloud from in a public place. He concludes the affidavit as follows:

> As this malicious-looking Mexican had the appearance of a man of intelligence, it was evident to my mind that he, having attentively listened to the reading of the title-page of said deposition, in favor of "La Abra Silver Mining Company contra La Republica de Mexico," wickedly determined that there should be one deposition less to go forward against his country, and, by this unworthy act of snatching and tearing up this deposition, that he would contribute to the defeat of said claim. I can conceive of no other motive to induce said Mexican to commit such an outrage against an American claimant; and having acted as magistrate in taking said deposition, I feel it my duty, as representative of the United States Government, to give this certificate, which I do at the request of the attorney for claimant, *to show the desperate means resorted to to defeat the claims of American citizens.* (P. 106.)

Adams was fully alive to the gross irregularities and improprieties he and Sisson had committed, and tried to overwhelm the testimony of the Mexi-

can witnesses by vehemently protesting that everything was regularly done before Sisson. He speaks of the "high character" of Sisson and of "his prudent and precise manner of doing business" (p. 182). Again, he says, "Each and every deposition taken in Mexico on behalf of the Abra Company, claimant in this case, was taken honorably and lawfully, and *wholly by the consul or other magistrate certifying to the same*," *etc.* (p. 181).

It is sufficient to say of these protestations that Sisson's deposition, next to be noticed, and which may be relied on where it makes against him or La Abra, shows them to be *wholly and willfully false.* As a consequence of this, Adams's deposition falls to the ground *as an entirety*, in obedience to a well-known principle. The court will the more readily reject this witness after getting some further insight into his character. He came to Dahlgren's hacienda, near San Dimas, with a cavalcade of twenty or thirty persons. Dahlgren entertained him and his companions for some days, during which time he took testimony at the hacienda, and Dahlgren became so disgusted with him that he avoided his company as much as possible. During the visit, Dahlgren says he was under the influence of liquor whenever he saw him, and that "his conversation, nearly all the time he was talking, was a lewd conversation about women and his adventures with

women." (Sen. Rep. No. 2705, 50th Cong., 2 sess., Appendix, pp. 702, 703.)

Dahlgren gives the following scene between Adams and the witness, Granger, which took place at the hacienda, where, it will be noted, Adams was *a guest*, and the incident is not calculated to inspire confidence in Abra's testimony:

> Question. What we want to get at, Captain, is what Adams did, if anything, for the purpose of intimidating or in any way controlling Granger?
>
> Answer. When Mr. Granger asked to see the testimony, Adams read it.
>
> Question. What testimony?
>
> Answer. The testimony that Granger had given. And he said, "General Adams, I did not give that testimony." He jumped up and walked to him with his fist doubled up and put it under his nose and said, "You did give it; do you call me a liar?" and threatened to strike him. And I said, "Get out of here."
>
> Question. That was before you testified at Mazatlan?
>
> Answer. Yes; I had no interest in this thing at all.
>
> Question. I suppose that was the reason why, at Mazatlan, you were careful to have your testimony taken down precisely as you gave it?
>
> Answer. Yes, sir; I wanted to see it.
>
> By Mr. FOSTER:
>
> Question. This occurrence you have just related occurred at what place?
>
> Answer. At my hacienda at San Dimas, where he examined Granger.
>
> By Mr. LINES:
>
> Question. Was that the result of that trouble; that you told Adams to leave the hacienda?
>
> Answer. No, sir. He apologized for it, and I said if he would not repeat it he might stay at the hacienda. Otherwise he should go up to the town.
>
> Question. But as to Granger's testimony?
>
> Answer. I don't know. As I said, it was not a matter that concerned me, and had my own affairs to look after. (Sen. Rep. No. 2705, p. 674.)

Turning now to Sisson's deposition, we find that

Adams was allowed to get up the depositions for La Abra at the hotel at Mazatlan, as the witness Avalos says, or at the consulate, and that the consul gave no particular attention to them until fair copies had been made, when he read them to the witnesses. (P. 693.)

When Sisson was before the Senate Committee on Foreign Relations he testified as follows:

Question. Were you acquainted with Alonzo W. Adams in his lifetime?

Answer. Yes, sir; I saw him there.

Question. When did you first meet him?

Answer. I think it was in 1868.

Question. What was Adams doing at Mazatlan?

Answer. I won't be exactly sure whether that is the time or not, but I think it was. He came down there to get affidavits in regard to a claim.

Question. Do you know how the depositions that he obtained were taken? I mean where and in what manner?

Answer. *Well, he had an office or room at the hotel.*

Question. At Mazatlan?

Answer. At Mazatlan, *and the witnesses used to go down there and their affidavits were prepared there;* as a general thing in a rough form, as you may say; they would be got together; sometimes they were written out in full and other times they were not. They would be got together and written out in the consulate. Sometimes they would come up there.

Question. The witnesses?

Answer. The witnesses. Sometimes after they got up there, in reading over their affidavits and looking them over, they would find something that was misunderstood or something might be wrong about them and have to commence and go it all over again, like enough. (Sen. Rep. No. 2705, 50th Cong., 2d sess., Appendix, p. 790. See further extracts from this deposition, Appendix D.)

When examined in this case as to the attention he gave to the taking of Dahlgren's deposition, the following occurred:

Question. You took a part in it as consul, *particularly when it was copied and read?*

Answer. Yes, sir.

Question. *That is the time your attention was particularly interested?*

Answer. *I gave my full attention to it then.*

Question. *Before that the parties were together there getting up the deposition, getting it in shape and proper form?*

Answer. *Yes, sir.*

Question. *And talking among themselves?*

Answer. *Yes, sir; talking among themselves.* (P. 693.)

We might expect such a consul as that to say: "It was not my business to get up depositions, but it was my business to swear people to tell the truth *after they did get them up.*" (P. 697.)

When asked if it was not his duty to see that the witness giving his testimony did justice to Mexico, he replied: "No; it was my duty to see that the thing was done as correct as I could, I suppose; but I was not attorney on the part of Mexico." (P. 697.) According to his notion of official propriety, his business began "*after they got through and the deposition was ready.* Then it was my business to look over it, *but not to help them to fix it up.*" (P. 697.) Again, he says that Adams and Peña "*got together and made up*" Dahlgren's deposition, and when they "got it all right, to satisfy themselves, Mr. Peña copied it as it should be copied to make a decent, respectable deposition of it." (P. 697.)

Being asked if he paid much attention when all this was going on, he replied: "*Not a terrible sight; no.* All that I was watching for was when they got it through and got it all right, I would have it

signed and sealed and got rid of as soon as possible." (Pp. 697, 698.)

This is what Adams refers to when he speaks of Sisson's "*prudent and precise manner of doing business,*" and says the depositions were taken "*honorably and lawfully,*" and "*wholly by the consul or other magistrate certifying to the same,*" statements which he knew to be *absolutely false.*

Certainly the conduct of Adams and Sisson,[1] as above shown, lends strong support to the theory of fraud on which the bill rests, and we respectfully submit that the court must regard the depositions laid before the commission by La Abra with entire distrust. There being absolutely no check on Adams in those purely *ex parte* proceedings, he and his confederates, Sisson, Peña, and Danglada were, no doubt, guilty of other criminal acts.

After this evidence of the delinquency of Adams and Sisson, and of a conspiracy between the two, we are prepared to believe the charge of Capt. C. B. Dahlgren, that Adams had tampered with his deposition. It appears that Dahlgren, being called away from Mazatlan by urgent business, was compelled to leave his testimony in rough notes in Adams's hands, to be copied on a clean sheet over his signature, and the charge is that Adams fraudulently

[1] But it is necessary that the court should read the whole of this deposition in order to get an adequate idea of the reprehensible conduct of Sisson and Adams and the other parties concerned.

perverted the testimony. (Sen. Rep. No. 2705, 50th Cong., 2d sess., Appendix, p. 644.)

Dahlgren was examined at great length before the Senate Foreign Relations Committee. The following extract from his deposition sufficiently shows the criminal methods of Sisson and Adams on that occasion:

By the CHAIRMAN:

Question. About how many [referring to the witness's statement that his deposition "filled up a number of sheets"]?

Answer. Oh, quite a number; there may have been a dozen or two dozen sheets; a large number of sheets. He [Adams] said, "I have finished." I then said, "General Adams, allow me to read over those papers." He said, "They are your answers as written down by my secretary, and it is long; it is not necessary; *have you no confidence in me?*" I said, "I wish to see those papers, and unless I do they can not go out of this room; I must see them." He then handed me the sheets, and I read them over. I then said, "*General Adams, those are not the answers as I gave them to you, sir, and I will not allow that to pass for evidence.*" "Well," he said, "Scratch it out, or erase it, as you see fit." That was done, and then I said, "Now those answers are satisfactory to me and I will sign them," and I did sign them. He then said, "That is not fit to hand in as testimony, all scarred up in that manner." I said, "You had no business to write those answers in that way." And I said, "Well, I am on the way to San Dimas, and I haven't time to stay longer." I then called to Mr. Sisson, who was consul at Mazatlan, while I was United States consul at Durango——

By Mr. FOSTER:

Question. At that time?

Answer. At that time; yes, sir. I said to Sisson, "I will sign a blank sheet of paper and put it in your possession as consul, as between two consuls; you are to transcribe these notes and retain the original and hand that signature with the transcribed sheets ahead of it to General Adams as my testimony." Sisson said he would do it. I then jumped on my mule and road away, 170 miles back to San Dimas.

Question. During the time you were being questioned by General Adams and your answers were being taken down, was Mr. Sisson present, and did he hear the testimony?

Answer. If he did, he merely walked into the room and out

again; but he was not there to listen to it, either half of it, or a third of it, or a quarter of it, and probably paid very little attention to what went on.

Question. Then he did not pretend to conduct the examination?

Answer. No, sir.

Question. Or be present during it?

Answer. No, sir; he was not present, that is, to any appreciable extent; he merely came in a few times, took a book or paper, or attended to some other consular business, and went out; but he did not attend to that examination—did not give it any personal attention. (Sen. Rep. No. 2705, Appendix, pp. 647, 648.)

Dahlgren was then carried through a very particular examination, which enabled him to point to the instances in which Adams and Sisson had falsified his deposition. (See extract from Dahlgren's deposition, Appendix C.)

After such evidence as this and Sisson's, can we resist the belief that Adams also prepared the affidavits of John Cole, W. G. S. Clark, John P. Cryder, and others, which he went to Mexico to procure?

It is true that the unqualified denials of Sisson and his secretary and translator, Danglada, are relied on to overthrow Dahlgren's charge; but the testimony of the consul (pp. 691, 692) and the telegram of his secretary, read by consent "for what it may be worth" in connection with the allegations in the bill in regard to Dahlgren and his deposition filed before the commission (pp. 741, 742), are not entitled to have any such effect. Enough appears in Sisson's own deposition as to the manner of taking Dahlgren's to discredit him completely, and

we submit that his secretary, who participated in that reprehensible proceeding, is no more entitled to be believed than Sisson or Adams himself. It is, furthermore, to be regretted that the telegram to Danglada was leading. It should have been the simple inquiry: What were the circumstances connected with the signing of Dahlgren's deposition? He should not have been informed of what Sisson had said on that subject. That he was so informed is a good reason for suppressing his telegram in reply. It is, indeed, to be regretted that counsel for appellant has not seen fit to take Danglada's deposition in this suit.

It can not be readily accepted that a son of the late Admiral Dahlgren would have preferred the charge he did against Adams and supported it by his oath without being certain of his premises.

It is true that Dahlgren has not been examined in this particular suit. It was not necessary that he should have been, for the present suit is a part of the very inquiry that was before the Senate committee, where appellant was represented by able counsel, who cross-examined Dahlgren thoroughly. There is abundant authority to support this position (see a number of examples collected in vol. 1, Phillips on Ev., 5th Am. Ed., with Cowen & Hill's and Edwards's notes, p. 319, note 110). Depositions taken in a former suit which was dismissed by complainant, were held admissible in a second suit by

the same complainant against the same defendant (Hopkins *v.* Stump, 2 H. & J., 301, 303). So depositions used in a cause in the exchequer are admissible in a suit in chancery between the same parties and involving the same matter (Stephenson *v.* Biney, L. R., 2 Eq., 303). Besides, the Senate report is a public document to which this court is at liberty to refer at pleasure.

The objection to the admissibility of Dahlgren's deposition, on the ground that he was not examined in this very suit, does not seem, therefore, to rest on any substantial reason.

The perjury of Bartholow, his insistence that Adams should be appointed agent to take the testimony, the fact that Treasurer Garth received his first information of the existence of the Joint-Commission from Bartholow *by a letter which is, of course, lost* (p. 719), and that he, Bartholow, was the head of the Western stockholders who had control of the company, and, what is more, was a *heavy loser* by the adventure, all go to show that Bartholow was one of the fabricators of the claim, and that Adams was his chosen vessel and representative.

Garth tells us that "there was a contract between the company and Adams which must be of record here, of course" (p. 718), *but where that contract is nobody knows.* It, as many other important documents, has disappeared in some unexplained manner. Under it, Garth tells us, Adams was to have

a third of what the company got, "*employ all the attorneys*," and pay the expenses of the witnesses (p. 710 and S. Rep. No. 2705, p. 170). He seems to have been well provided for those purposes, for on July 1, 1880, the company assigned him an interest in the award to the amount of $145,757.23 (p. 628), and on February 1, 1884, the company assigned him another interest in the award to the amount of $30,000 (p. 626), and on March 24, 1882, the company stipulated that the sum due him was $99,731.46, payable without the usual conditions (pp. 630–632). And on May 6, 1880, Adams entered into an agreement with one Camp in the recital of which it appears that he, Adams, had an interest in the claim of John Cole *and others* against Mexico (p. 641). Cole we know to have testified for the claim of Abra before the commission, and we have reason to suppose that some of the "*others*" were witnesses in its support also.

Garth testifies that as soon as practicable steps were taken "*to raise voluntary contributions from the directors and stockholders to hire somebody to go out to Mexico to take testimony*" (p. 708).

But it was Sumner Stow Ely who prepared the way for the *ex parte* and corrupt testimony introduced before the joint commission in support of the claim. On November 30, 1869, Ely, in the firm name of Britton & Ely, wrote to Hon. Caleb Cush-

ing, agent of Mexico before the Joint-Commission, making the following remarkable inquiries:

> We are engaged in the preparation of the case for said company, and desire and are about to take testimony in New York and St. Louis and in several places in the States of Sinaloa and Durango, in Mexico.
>
> We do not see in the printed "rules of the American and Mexican joint commission" (of which we have a copy) any provision made for *notice to the opposite party of an intention to take testimony and to appear and cross-examine, etc.*, from which omission *we presume that the testimony is to be taken ex parte*, and we have accordingly taken the testimony of one witness, Charles H. Exall, in this city, who can be cross-examined at your pleasure. Nevertheless, to guard against a misconception of the rules on our part, we give you the above general notice of our intention to take testimony in support of the claim of said company; *and if you deem notices specific as to time, place, etc., necessary or desirable (and as to which we ask of you the favor to inform us) we will give them to you.* (Pp. 667, 668.)

This letter, Ely's own deposition shows, was written by him (p. 660).

Was the letter written in good faith or was it a mere *blind?* Why should Ely have desired to know from Mr. Cushing, officially, what he knew already, no doubt; namely, whether or no the usual requirements, mentioned in the letter, would be insisted on by him, Cushing? Could it be possible that counsel preparing an *honest* claim, approaching $4,000,000 in amount, would think of taking testimony in its support *without giving the other side specific notice as to time, place, and the names of witnesses*, and thus furnishing full opportunity to appear and cross-examine?

If the Joint-Commission had no rules as to such matters, was not that fact notice to the world that

they *invoked the rules universally observed?* Surely it could not have been argued that the commission was to proceed *without law* because its rules and the treaty were silent in that respect.

Nor did Ely reason in that way, else why did he not ask if the *oath* would be required? He knew that he could not safely go so far as to dispense with that fundamental requirement, at least. If now the oath was, in his opinion, necessary, by what process of reasoning did he reach the conclusion that the *supreme test of the value of evidence*, the cross-examination, could be safely dispensed with?

The truth is, that Ely supposed he could hold the oath in subjection to his will; but he knew that the cross-examination could not be so controlled.

Let us further examine this letter to Mr. Cushing. Its statement that "we have accordingly taken the testimony of one witness, Charles H. Exall, in this city, who can be cross-examined at your pleasure," is *a deliberate falsehood*, because the record shows (p. 34) that the deposition referred to was not taken until December 2, 1869, two days after the letter was written, and on the day Mr. Cushing's *unofficial* reply to it was dated. (P. 668.) The deposition, if written out, was not sworn to when the letter was written, for the reason, no doubt, that it might need some *doctoring*, in case the invitation to cross-examine Exall should be accepted.

Else why did not a copy of the deposition accompany the letter?

The letter, after stating that the writers "*are the attorneys and counsel*" of the company, and calling attention to the general character of the claim, then proceeds:

> We are engaged in the preparation of the case for said company, and desire and are about to take testimony in New York and St. Louis and in several places in the States of Sinaloa and Durango, in Mexico.

In his deposition given on September 24, 1874, Mr. Ely testified as follows:

> I am not the agent or attorney of any person interested in the claim of said company, which is being prosecuted in this cause; I am not the agent of said company; *I am its attorney at the city of New York, for its general business, as I have already stated, but it has special attorneys at Washington for the prosecution of said claim;* and I have no interest whatever, direct, contingent, or otherwise, in said claim. (P. 176.)

In April, 1895, in this city, Mr. Ely was examined in this suit. The court's attention is called to the following extract from this deposition:

> Question. But in preparing the case for the commission, was it not necessary for the officers of the company and the counsel of the company to inquire for and search for the books containing the transactions of the company prior to 1868?
>
> Answer. *That is a question that would have to be determined by the counsel here* [in Washington] *who controlled the matter. I had nothing to do with the matter.* The books, as I understand it, were in Mexico. (P. 659.)

The letter and the extracts from the depositions furnish conclusive evidence of *another* deliberate falsehood to be laid at Ely's door, but it is immaterial to inquire whether the falsehood is in the letter

or the depositions—in other words, whether Ely was counsel for the prosecution of the claim, as he states in the letter, or was not, as he deposed when it was to the interest of the company that he should so swear. And his attempt to explain away the inconsistency (p. 653) only serves to make his perjury more clear.

Again, it will be noted that Ely only produces Mr. Cushing's *unofficial reply* to his letter (p. 668), without attempting to account for the absence of the *official one.* Why was the latter suppressed? There was a motive for it, we may be sure.

It is noticeable that the agent for the United States, Hon. J. Hubley Ashton, was not applied to for the information sought from the agent of Mexico, nor is any explanation offered. As it was Mr. Ashton's duty to present the Abra claim to the commission and retain complete charge of it, we think it was due to that gentleman to consult him upon the points mentioned in the letter to Mr. Cushing, and the omission to do so is suspicious. Indeed, the appellant has introduced in evidence a circular of the Department of State, dated February 23, 1870 (pp. 742, 743), which expressly refers claimants, for information, to "J. Hubley Ashton, Esq., the agent and counsel of the United States." But Mr. Ely stood in need of no such prompting as that.

Taking all this in connection with the prevailing opinion "*that criminal prosecutions could not be main-*

tained for false swearing in cases before it" [the commission] (Mr. Romero to Secretary Bayard, S. Ex. Doc. No. 109, 50th Congress, 1st sess., p. 89), we see the strongest temptation to fraud and the subornation of false witnesses; and there can hardly be a doubt that the opportunity thus afforded was improved by Ely, Adams, Sisson, Collins, Exall, and Bartholow, and by others playing subordinate parts in this drama of fraud and falsehood. It is not too severe to say that these men deserved the brand of infamy which the common law puts upon persons convicted of offences affecting the administration of justice. (2 Russ. Cr. p. 973.)

THE UMPIRE'S AWARD NOT PRIMA FACIE EVIDENCE.

Without intending disrespect to Sir Edward Thornton, the umpire, it should be said, as due to this court and to the cause of justice, that the award in this case is not the product of a mind skilled in the art of weighing evidence—of a mind that, by training and experience, had come to know adequately that testimony proceeding from the mouths of seemingly fair and credible witnesses, but counter to the experience of mankind, is no more worthy of belief than that proceeding from obviously tainted sources; or, in other words, that testimony, to be credited, must be such as "*the common experience of mankind can approve as probable under the circumstances.*"

Not only so, the umpire betrays a want of competent knowledge of the evidence even when he says, in the beginning of the award, that there was "NOTHING RASH" in that headlong folly, that midsummer madness—La Abra's adventure in Mexico.

Equally unexpected is the statement there that the claimant went into Mexico relying upon the proclamations and invitations of President Juarez, *not one of which has ever been in evidence*,[1] when at that very time the Empire was established and supported by French bayonets and Maximilian was on his throne in the City of Mexico, and Benito Juarez, the President of the Republic, who, it is said, issued those proclamations, was a hunted fugitive and not much more than President in name.

To accept the impossibilities and improbabilities of the claimant's case involved belief, on the umpire's part, that through some miraculous interposition and for some inscrutable reason the established laws of human conduct were suspended as to the actors in this drama of fraud.

The umpire indulges in the following remarks

[1] The following occurs in the brief of Señor Avila in support of his motion for a rehearing before the umpire of the Abra case:

"Parties interested in this claim have said so much about proclamations inviting foreigners to immigrate to Mexico *that though they present none of those proclamations, and do not even cite their dates with any precision*, people have come to believe not only in their simple existence, but that the Government assumed to grant special protection and immunities *to all industry undertaken with foreign capital*." (Ex. Doc. No. 103, 48 Cong., 1st sess., pp. 84, 85.)

with regard to the claim for ores stolen and the evidence adduced in support thereof:

> The umpire is satisfied, from the respectable evidence produced, that a large quantity of valuable ore had been extracted from the mines and deposited at the company's mill, and that it was there when the superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the umpire is of opinion that there is not sufficient proof, *nor indeed such proof as might have been produced, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. In so well regulated a business as the umpire believes that it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction.* The idea formed, even by persons intelligent in the matter, of the quantity of a mass of ore *must necessarily be vague and uncertain, and that of its average value still more so.* Still, the umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. (P. 9.)

Yet, on this *suspicious and presumptively fraudulent* testimony, introduced without the slightest attempt on claimant's part to account for the absence of the higher evidence to which it points, the umpire made an award in favor of claimant for $100,000, in Mexican gold, to cover lost ores, with an annual interest of 6 per cent from March 20, 1869.

Quite as remarkable, if we may be permitted to advert to certain errors of law seemingly of a character to reflect still more on the judicial qualifications of the umpire, is the condemnation of Mexico to pay the company the equivalent of its capital stock, namely, $235,000, with interest, in the absence of evidence to show that Mexico had confis-

cated the mines, and in the face of the evidence that claimant *purposely abandoned its property rights in them.* Mob violence might have dislodged the company's possession, but could not destroy a title which the whole power of the Government of the United States might have been relied on to support.

Nor are we able to perceive on what ground interest was awarded on that sum, especially in the light of the umpire's own declaration that the precariousness of mining investments rendered it out of the question to award profits. Is not the interest thus adjudged only another name for profits, we would inquire?

In addition to the umpire's want of skill in weighing evidence,[1] it is apparent that the business in his hands as umpire and, presumably, as minister of a great power, near Washington, together with the necessity of completing his work within the time which was the limit of his powers, were conditions extremely unfavorable to a thorough examination of this voluminous and confused case.[2]

Under these circumstances, we respectfully submit that the award of the umpire is not even *prima facie* evidence in favor of the claimant, and should

[1] The Romans had a saying that it does not fall to the lot of everyone to visit Corinth, *Non cuivis homini contingit adire Corinthum* (Hor. Ep. 1, 17, 36), nor is it derogatory to any intellect to say that nature has denied it the judicial instinct.

[2] Sir Edward Thornton decided 460 cases, as umpire, and wrote over 400 opinions. (Ex. Doc. No. 103, H. R., 48 Cong., 1st sess., p 17.)

go for nothing in the determination of the question of fraud.

If, now, our reasoning be correct, the case of La Abra Company as presented to the Commission and then to the umpire was incredible because of gross improbability, not to say impossibility, and because the testimony on which the charges in the memorial are founded is more than suspicious on its face, thus justifying the conclusion that the claimant and its witnesses who attempted to blacken the escutcheon of Mexico were all members of a common conspiracy, all partners in a common crime.

THE SUPPRESSION OF DE LAGÑEL'S TESTIMONY.

It will be remembered that it was less than a year after De Lagñel resigned and left the service of the company at Tayoltita that Exall claims to have been driven from the mines. The company, therefore, had every reason to believe that De Lagñel could throw much light on the controversy between it and Mexico, and the failure to examine him is strong to show the claim to be a fabrication.

The fact is, that Bartholow, Collins, Adams, Ely, and the other members of the conspiracy were as afraid of that honest soldier as a struck fowl is of a gun. They knew that he could neither be browbeaten nor bribed, so they determined to suppress the information they had concerning his whereabouts.

Accordingly, we find the first depositions of Collins (p. 38) and Exall (p. 30) taken in New York under the eye of Sumner Stow Ely, entirely silent as to De Lagñel. This silence would not have been broken but for the unexpected references to De Lagñel by the two Mexican witnesses, Loaiza (p. 71) and Manjarrez (p. 145). It now became necessary to explain away the omission to put him on the stand, and Collins and Exall attempted to furnish the explanation in their depositions in *rebuttal*, supposing they were then safe from contradiction.

Collins said:

> The company has made *diligent inquiry* to find him [De Lagñel], for the purpose of obtaining his deposition as evidence in this cause, but they were unable to learn where he resided, or could be found, and do not know whether he is now living or not. The company was informed and believe, that before the filing of the memorial in this cause, he went to the State of Florida, and afterwards to South America, and then to China, but could get no definite information as to his whereabouts; for these reasons, his evidence could not be, and has not been, obtained on behalf of the claimant in this cause. (P. 148.)

Exall said:

> Col. Julian A. de Lagñel preceded me as superintendent. I was his assistant superintendent. I can not say where he is, other than this: When I returned from Mexico to the city of New York, in the spring of 1868, I saw him in this city, which was then his headquarters. He was *unmarried*, I believe, and had no fixed or permanent residence. Soon afterwards *he engaged in business which took him to the State of Florida*, and I saw no more of him. I have been reliably informed and believe that he afterwards went to South America, and thence to China, and has not returned to this country. (P. 149.)

Knowing, as we do now from De Lagñel, the true history of the company's operations at Tayoltita,

can we hesitate to conclude that Collins swore falsely when he said that the company made "*diligent inquiry*" to find De Lagñel "for the *purpose of obtaining his deposition?*"

De Lagñel says that Garth, the treasurer, and Mr. Hearn, then president of the company, were informed of his antecedents when he applied to the company for employment, and he thought "Garth certainly knew" where his family lived. At any rate, they knew his indorsers, Rev. Mr. Hawkes, Moses Taylor, president of the City Bank, and Thomas L. Beare, *who had known him from childhood.* (Pp. 491, 492.)

Did Collins's "*diligent inquiry*" extend to these prominent gentlemen, who had, only four years before the memorial was filed, recommended De Lagñel to Garth and Hearn? Certainly Collins and Ely, if acting in good faith, would have made inquiry of Garth, the mainspring of the company and its organ of communication with the mines, and would, in that case, have been referred by him to the above sources of information. Then, again, De Lagñel was introduced to Garth by Col. James R. Branch, of Richmond, a well-known man in that community. (P. 478.) It is hardly possible that Collins or Ely would have failed to find De Lagñel if he had followed these clues and had wanted to find him.

After De Lagñel's return from the mines, and after Exall's return also, these two friends met in

New York somewhere between the fall of 1868 and September, 1870, and De Lagñel, at Exall's request, "went before a lawyer" and testified as to something he doesn't remember, but surmises it might have been Exall's claim against the company. (P. 491.) We know it had nothing to do with La Abra's claim against Mexico, *because De Lagñel never heard of that until some time in 1878*, when he received a telegram from the Mexican minister, asking him, "in the name of truth and justice," to identify the letter book of the company (pp. 491, 492), and was then, for the first time, informed of the claim by the Mexican consul.

On June 15, 1868, Exall wrote Granger from New York that "De Lagñel is at Fort Hamilton." (P. 289.) On July 18, 1868, Exall says, in a letter to Granger: "Before leaving New York the other day I went down to Fort Hamilton to see De Lagñel; he seemed much pleased to meet with me. *I spent some hours with him very pleasantly.*" (P. 290.) In this letter he alludes to De Lagñel's wife as "*a fine woman*," but in his subsequent deposition in rebuttal he says that in 1868 De Lagñel "*was unmarried, I believe*, and had no fixed or permanent residence." (P. 149.) That Exall told this deliberate untruth is not surprising, but it *is surprising* that he *never told De Lagñel about his terrible experiences at the mines.* (P. 491.) The latter says he never had any conversation with Exall touching

"the condition of affairs at the mines or his reason for leaving there." In the pleasant hours he passed with De Lagñel and his wife at Fort Hamilton not a syllable was uttered by Exall about his *persecutions* in Mexico and, finally, his *expulsion* from the country!

It is apparent that Collins and Exall both knew where to find De Lagñel. Exall certainly did when he wanted his testimony, and when they testified he had gone to Florida, they knew he was the purser of a ship plying between New York and Fernandina, Fla., and in New York every few days (p. 490), and when they said they were informed he had gone to China, they knew he had entered the service of the Pacific Mail Steamship Company (p. 490). It is extremely improbable that they would have known some of the main facts of De Lagñel's whereabouts without knowing the rest.

Under these circumstances, was it not incumbent on Collins to state precisely what efforts he had made to find De Lagñel, that it might appear whether he had acted in good faith or not?

SEIZURES OF MULE TRAINS.

This item of claim, always absurd, is in the light of the new evidence demonstrably false. It was an affront to the intelligence of the Commission to maintain that the company went on acquiring and losing by capture mule train after mule train,

when it could hire all the transportation it needed, for, as De Lagñel said, "*most everybody*" had mules to hire. (P. 609.)

When De Lagñel tells us the company *at most* owned "*twelve mules*," "not that many all the time, but that is the largest number I ever knew, *that is the number of pack saddles we had*," and that, with the exception of one or two that had strayed away or been stolen, he turned them over to Exall (p. 489), argument on the subject is at an end if the testimony of this most respectable witness is to count for anything.

Bartholow, whom he went down there to succeed, and who swore that it was "*absolutely necessary for the company to own and work large numbers of mules*," and that two of the company's trains were captured, never told De Lagñel of mule trains that belonged to the company or of the detention even of such, except "a hired train," which "*was released*" on complaint to the authorities. (P. 489.)

Is it open to debate that, if the company had been the possessor of mule trains and been despoiled of them, the fact would have come, inevitably, to the knowledge of Sundell and Torres? The former says, however, that his company, Durango, and La Abra owned *no pack mules* and that La Abra owned "from 8 to 10 *riding mules*," and that he *never heard of any mule trains belonging to or in the employ of La Abra being taken by the military forces of the Liberal*

army. (P. 526.) Torres says that La Abra "had three or four mules that were used for riding purposes," and got its supplies by means of "packing mules" belonging to different parties "from La Noria and from other places." He, who was born near Tayoltita, and had lived there for over sixty years and was a miner by occupation, says he never heard of seizures by the military authorities of mule trains in the employment of La Abra. (Pp. 550, 551.) Was it possible for such occurrences to have happened and for him not to have even *heard* of them?

The witnesses for Mexico, Aguirre (p. 117), Molina (p. 117), Nuñez (p. 118), Sloan (p. 120), Refugio Fonseca (p. 128), Manjarrez (p. 121), and Sandoval (p. 131), say, some that the company hired all its mules, and others that it owned three or four or a dozen, and never more than twenty at the outside. These little discrepancies enhance, rather than impair, the effect of this testimony.

It is gratifying to find that the new evidence affords the much-spurned Mexican witnesses more than substantial corroboration, thus showing the falsity and foulness of the aspersions cast on these witnesses by Exall, Adams, and Bartholow, who were, in our judgment, unworthy to unloose the shoe's latchet of the humblest of them. Indeed, it would seem that about the only reliable testimony submitted to the commission was that adduced by

Mexico, and this, we take leave to say, in the face of the truly remarkable estimate placed on the claimant's evidence by the distinguished umpire.

Bartholow swears that two entire mule trains loaded with provisions and supplies belonging to the company were captured and appropriated "by the military authorities of the Mexican Republic," and that William Grove, a valued employee, who had charge of one or both of the trains, was murdered.

Bartholow says that he applied to the proper military authority for redress, but without avail. We give his own words:

> I visited said commander at San Ygnacio, whose name, I think, was General Guerra, or General Parra—I do not now recollect which of the two was then commanding at that point. I knew them both, and a number of other officers of said army, whose troops had committed similar depredations, and had levied other "prestamos" upon the Abra Company, while under my superintendence. I related the circumstances attending said captures, or robberies from the company, and of the murder of the company's quartermaster, who was acting as captain of said mule trains, to said commanding general, but he refused the protection I asked on behalf of the Abra Company, and he refused to order a return of said mules and supplies, or to indemnify the company for the same. He stated that he had no authority to indemnify the company, and that it was too late to restore the property, as it had passed out of his control. He also refused to instruct the authorities at San Dimas, and Tayoltita, as I requested him to do, to protect the Abra Company from further depredations upon its property and mines in that district. (P. 170.)

Contrast this testimony with the following extract from his own report to the company, as superintendent, dated Tayoltita, March 7, 1866:

> In my last letter I informed you that one of my employees, William Grove, esq., formerly of Saline County, Mo., was miss-

ing, and I feared had been waylaid and murdered; since then my worst fears have been realized, for after a search of two weeks his body was found buried in the sand on the bank of the Piastla River, some 10 miles above the mouth of Candalaro Creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found; the mule is, however, likely to turn up, as it had our hacienda brand "U. S." on the left shoulder. *These facts were promptly laid before the commander of the liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These we are assured will be tried by court martial, and if found guilty will be summarily executed.*

Mr. Grove, I think, lost his life by imprudence in talking; he had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had *nominally* purchased a train of pack mules in Mr. Grove's name and sent him to San Ignacio to obtain a permit for them to pack for me, and a guaranty that they would not be taken by the army. He succeeded in getting these documents, *and was on his way home to take possession of the mules and start them to packing;* he passed the night previous to his death at the house of one Meliton, at Techamate, the place where you will recollect we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation; was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places. (Pp. 211, 212.)

It thus appears that Grove, instead of being in charge of one of the trains or of both—*Bartholow*

states it both ways—was, when murdered, traveling alone and "*on his way home to take possession of the mules and start them to packing.*" Indeed, Clark, the claimant's swift witness, says that Grove, when slain, was "*traveling alone, and not in charge of his train of mules.*" (P. 63.)

It is perfectly clear that this murder had no connection with any property loss to the company, and that what Bartholow says about the harsh and improper conduct of the military commander, to whom he reported the murder and so-called capture, is but another instance of the shocking recklessness of statement to be found among the claimant's witnesses.

To think that this man, Bartholow, should have had the audacity to swear that "two entire mule trains, loaded with provisions and supplies," were captured at the time Grove was murdered, and that even the promise of indemnity was denied by the Mexican authorities!

We propose now to give some extracts from the official reports and letters of the superintendents to show that the company did not own, but *hired*, pack trains to do its transportation.

In his letter to the company of February 6, 1866 (p. 203), Bartholow says:

> Mr. Griffith. Wm. Grove (a new man from Saline County, Mo.), and Dr. Hardy has charge of all the pack trains; each manages and controls a train; this is necessary for the reason that *if some American* in the employ of the company *is not constantly with the trains*, there is great danger, if not a certainty, that the animals would be taken by the military authorities, and *besides, I could not get the Mexicans to pack for us unless I agreed to do this;* besides, with this arrangement I have a guar-

anty that my men, animals, and effects will not be interfered with.

Here we see that THE PRESENCE OF AN AMERICAN WAS SUFFICIENT TO PROTECT A PACK TRAIN FROM SEIZURE, and that Mexican packers were doing the company's transportation!

Again, in the same letter (p. 204), speaking of the disturbed condition of the country, he remarks that "it was with the greatest difficulty *that I could get anyone to agree to pack at all.*"

In his letter of February 5, 1866 (p. 205), he refers to "the owners of a train of mules *who desire to enter into the employ of this company.*"

In another letter, dated February 21, 1866 (p. 207), he speaks of meeting "174 mules loaded with my machinery," and then says he will need a certain amount of money "*to pay the packers I need.*"

In a letter dated February 28, 1866 (p. 209), we find the following:

Some weeks since I sent to Santiago Papasquia for a lot of mules to pack for me. Some came promptly, and are now in my employ, and to-day about 70 more arrived, all of which I fear I can not employ, yet think I need 20 to 30 of them to finish up my freight from below. If you need the rest, and will come over to-morrow or next day, we can make, doubtless, a satisfactory arrangement to use the whole lot in copartnership, as it is desirable, in my opinion, to retain them. If, however, this does not suit you, I will use all in transporting salt and corn from below. Please attend to this promptly.

In another, dated March 4, 1866 (p. 209), Bartholow says: "The bearer of this letter has a pack train of 64 mules, which I have hired to pack corn for Mr. Rice and myself from San Ignacio."

In another, dated April 13, 1866 (p. 222), he says: "I have plenty of packing for your mules here at fair prices, and will have for several months."

In his letter of May 5, 1866 (p. 224), turning over the superintendency of the mines to De Lagñel, Bartholow says: "*The company own 12 mules.*"

De Lagñel, in his letter of June 6, 1866 (p. 227), to W. G. S. Clarke, says: "*Your* train bringing, etc., has just arrived." Again, in the same letter, he says: "To feed *your* train down, I have advanced $20 to the same party."

May it not be said now that the claim for seizures of mule trains has been effectually disposed of and no longer requires attention?

THE ABANDONMENT THEORY.

The absurd theory that the mines became a total loss to the company by *compulsory* abandonment was started as the foundation for a claim that Mexico should return to the company the capital invested in the purchase of the property. But what sane man would have exchanged a *vested right* in what he believed to be a bonanza for the mere *lottery* of a speculative claim for damages for the loss of that right? The fact that such an exchange was made here goes far to establish the fraud charged in the bill. As has been said already, the company could only have lost the possession of its property by expulsion from Mexico. This Government, if

appealed to, would not have tolerated the idea that the loss of possession drew after it any loss of right.

But the after-discovered evidence completely overturns this theory, for it shows that Exall left in Granger's hands the following delegation of authority, in the form of a letter, placing him in charge of La Abra's affairs and property:

TAYOLTITA, *February 26, 1868.*

Mr. JAMES GRANGER.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course acting in all your transactions with an eye to the interests of the company.

This will to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

(P. 281.) CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

There can be no doubt that Granger considered himself as duly empowered by that paper to represent the company as Exall's substitute, for in August, 1868, we find him writing the following letter with reference to taxes due on the company's property:

[Translation.]

TAYOLTITA, *August 12, 1868.*

Señor Don REMIGIO ROCHA.

DEAR SIR: I have received the communication calling upon this company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct, *but as I am only acting in the absence of the superintendent, and as there is no money nor effects to pay this tax,* I beg you to wait until the month of November, *at which time said superintend-*

ent is to come, and then the sums due by this company on account of this tax will be paid.

Your most humble servant,

(P. 282.) SANTIAGO GRANGER.

As late as September, 1873, the record shows that Granger applied to a court at San Dimas for the purpose of having Exall's letter of authority done into Spanish by Sundell under the court's sanction, alleging as a reason that the document in question "*serves him as proof of his being in charge of said affairs by proxy.*" (Pp. 530, 531, 336, 337.)

About three years later we find Granger, the sub-agent, presenting himself before the judge of first instance at San Dimas, for the purpose stated in the following paper:

Letter of Santiago Granger to the judge of first instance at San Dimas.

I, Santiago Granger, a native of England, and a resident of this place, present myself before you and say, that I have disposed of the articles hereinafter specified, property of the Abra Mining Company, in the district of Tayoltita, in order that you may be pleased to appoint assessors to place a valuation upon them, so that at any time when the company shall call on me, I may be able to deduct the amount of their value from what said company owe me. They are as follows: 1 counter for store, 1 range of shelves, 3 large doors, 5 arrobas of iron.

(Signed.) SANTIAGO GRANGER.

SAN DIMAS, *June 4th, 1871.*

(P. 121.)

Even after Granger was compelled to leave the mines for employment elsewhere, he continued to exercise what supervision he could over the company's interests.

This practical construction of Exall's letter is a guide to its meaning of no small value.

Both Collins (p. 147) and Exall (pp. 151, 152) try to show that Exall never made Granger his sub-agent, for lack of power to do so; but certainly Exall took a different view of the superintendent's powers when he was constituted De Lagñel's sub-agent, on the eve of the latter's departure from Mazatlan on a business trip (pp. 260, 261), and signed a business letter J. A. De Lagñel, *per C. H. Exall* (p. 261). Here is a *stubborn fact* which these witnesses did not expect to encounter. Certainly De Lagñel's powers were not greater than Exall's.

In harmony with our view is Sundell's testimony that Exall openly said, in January, 1868, or that it was then generally known, that he was going to New York "*to consult with the company.*" This is confirmed by the fact that the letter of attorney is dated February 26, 1868, and the inference to be drawn is that Exall did not leave in March, 1868, in precipitate flight, but to carry out a previously formed purpose. (P. 521.)

In view of all the evidence on the point, the chairman of the Senate Foreign Relations Committee declared his conviction to be "a fixed one" that Exall left Granger at the mines "as the agent" of the company, and that this "was legally done." (Sen. Rep. No. 2705, p. 681.)

On March 15, 1868, Exall wrote Granger from Mazatlan as follows:

> In reference to the La Abra affairs, I think we will have to look to this country. The property can not be sold without legal authority from the company. This I think I can get. Am induced to believe so by the company's letters received. In fact, it would be difficult to get a purchaser without authority to sell. I am certain of being able to get some power from them so as to enable us to secure ourselves. I will communicate with company from San Francisco, and, if best, will go on immediately to New York *and return as soon as possible.* Please keep everything in the best possible shape and secure, and by no means let my books be seen or known. It is to the interest of us both to do so; therefore I know you will act as I advise in the matter. I have been quite sick since being here, and at one time was afraid wouldn't be able to go up. Am now much better, and hope to be off to-morrow. The line is so arranged now that you can get from New York to Mazatlan in twenty days, *so I will not be gone very long.* Please act prudently in this matter, and in a few months I think I will be able to put us both right. Be sure and write me by next steamer to San Francisco. I will make arrangements in San Francisco or elsewhere. Direct care of Weil & Co. You will get their number from the books.
>
> Hoping that you may get along all right, and *that I will be soon again with you with means to satisfy ourselves.* (P. 287.)

On April 7, 1868, Exall wrote Granger from San Francisco as follows:

> I have determined to go on East; think it best I should do so, as the affairs of the company can and must be decided at once, *and I can, from New York, get to M. in twenty days;* so you see this is the speediest way to settle the thing. *For God's sake keep everything in as good shape as possible, and in event we have to fall back on the property it will be in such condition that we may be able to realize something from it.* It is hardly necessary to give any further instructions, as I have previously written all that I could on the subject, and you, knowing as well as myself, must be guided by your judgment. I will sail on the 4th or 5th by way of Nicaragua—steamer on this side, *Moses Taylor;* Atlantic side, *Guiding Star.* May probably have a rough time. I have been considerably bored since being here and wish to get off as soon as possible. *I will either come on back immediately from New York or write.* (P. 287.)

On May 8, 1868, Exall writes Granger from New York, urging him "*to keep all secure at the mines*," and, if possible, "*get prorogas on mines where times are expiring; keep them secure, if possible, in some way.*" In the same letter he directs Granger to extend Ariza's privilege for three, four, or six months, and *not to extend Guadalupe's more than a month at a time.* (P. 288.) In a word, *the hated Exall still continued in control, by his avowed subagent, Granger,* and it makes no difference what ulterior purposes the two may have had, the point being that, after the Mexican authorities had *driven La Abra away,* as claimed, Granger was permitted to remain in possession *under its name!*

This evidence gives "superfluous death" to the already riddled credit of Exall and Collins. Its inconsistency with the former's account, as witness, of his *hegira* requires no comment.

THE LETTER-PRESS COPY BOOK.

In this book, happily discovered for the cause of truth and justice, we find the life of the company reflected as in a mirror.

It furnishes the only evidence in the case, coming from the claimant's side of the issue, that agrees and harmonizes with the conduct of the company and its representatives, and therefore must be true, though it make every other witness false. Let us examine this book in connection with the other evidence.

It will be remembered that Exall, in his second deposition, in rebuttal, said that "*early in 1868*" he beneficiated "about 20 tons" of ore, with a result of $17,000, which he "put into the general fund of the company and used in said works" (p. 156), and yet this witness, in his letter to the company of January 24, 1868, sends up a piteous wail for money. Everything had stopped; no means at hand to save the mines from denouncement; debts right and left and nothing wherewith to pay them. "What is your intention?" says he. "Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them." (P. 281.)

But as *nothing was doing at the mines*, what had become of the $17,000? Is it not as clear as noontide that this money had no existence save as the *coinage of Exall's brain?*

After reading Exall's testimony with reference to the persecutions and indignities he suffered at the hands of the Mexican authorities, it is a surprise to find him writing to the company on October 6, 1867, *and while the alleged outrages were going on*, that "*there are no difficulties about authorities*, boundaries, or anything else concerning the mines and hacienda, provided there is money in hand, and *money must* be sent." (P. 275.)

A more dismal picture than this letter presents is scarcely conceivable. The writer represents him-

self as without "money, stock, or credit." He had worked as economically as possible, and "cut down expenses to the lowest point," and yet "*what little good is taken out amounts to almost nothing.*" He had "exhausted all the ore that I [he] had on hand *that was* worth working. That which I [he] worked was *very poor and the yield small.* The La Luz, on the patio, WON'T PAY TO THROW IT IN THE RIVER. I have had numerous assays made from all parts of each pile; *the returns won't pay.*" Again, "I am compelled to keep men in mines *which yield nothing*, merely to hold them," but this, he adds, must be stopped and the mines be left unprotected.

On November 17 and December 18, 1867, he continues these appeals for succor, and protests the desperation of his situation. Referring to certain drafts on the company, he says, "For God's sake telegraph to and pay them," and "My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances." (Pp. 276, 277.)

But the voice of distress was not altogether from the mines, for we find Garth, the company's treasurer, writing to Exall from New York, on May 10, 1867, that "the affairs of the company *here* are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any further aid from here, and look anxiously to be

reimbursed very soon from the products of the mine, and it is hoped that your best energies will be exerted to afford relief." (P. 282.)

Another letter to Exall from the same source, dated two days later than the one just quoted from, is practically a confession of the company's insolvency, for it frankly admits inability to meet De Lagñel's draft for $5,000 in favor of the Bank of California, which, we may add, went to protest and never has been paid to this day. (Pp. 282, 283.)

Another letter to Exall from the treasurer, dated May 30, 1867, is full of amazement and incredulity at the beggarly results from the costly adventure. "If, however," says the writer, "the ores are indeed worthless, I don't see that any process of working will be of any avail, and *have the worst fears that our enterprise will, after all, be fruitless of good.*" (P. 283.)

Another letter from the treasurer to Exall, dated June 10, 1867, and indited after De Lagñel's return to New York, says: "*The account that Colonel De Lagñel gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes.*" Then follows the refrain, "No money in the treasury" and "no means of raising any," and a reference to the dishonor of De Lagñel's draft. (P. 284.)

In a letter dated July 10, 1867, the treasurer informs Exall that "appeals have been made in vain for aid to the stockholders." He acknowledges receipt of some sample bullion, but fears "that it is

worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here." He cautions Exall "not to go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal." Writing under the depression of this dismal news, he says: "*If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.*"

Another letter from the same to the same, written ten days later, tells Exall that his proposed draft for $3,000 will not be met, as the company has no money. (P. 285.)

A letter from the treasurer to Exall, dated August 10, 1867, contains the following:

> We observe with deep regret and disappointment that you were making but little progress in beneficiating the ores now on "patio," and that the yield had not improved. *This is a severe blow to the enterprise*, as we had expected long before this time that you would not only be in position to sustain yourself, but to remit us enough to pay off the large indebtedness here. We learn with deep regret that you are likely to become embarrassed in getting supplies for the rainy season. Long before this reaches you it will be seen that the draft of De Lagüel, drawn for $5,000, was protested and returned to Mexico, and that you must try and pay it: and it is well that you did succeed in negotiating the draft for $3,000 you proposed, as we could not have paid it, and you must manage to get along with what resources you have, as we can not give you any aid from here. I would advise you to try and beneficiate what ore you have on hand, *if it will pay to do so*, and to cut down expenses to the lowest point, merely taking care of the interest and property of the company as best you can until further instructed; and in meantime give us complete account of expenses, debts, and full balance sheet of your books to latest period; and also give us your opinion in full of the prospects of the mines, values of the ores, cost of raising and working, with yield of same, as requested in former letters. (P. 322.)

This was followed by another, which closes the series, and is as follows:

NEW YORK, *October 10, 1867.*

Mr. CHARLES H. EXALL,
Tayoltita, Mexico.

DEAR SIR: Since ours of 30th September we have yours of 5th August from Mazatlan. Note contents. We are deeply pained to find that you are not well, and that you are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of California has again sent Col. D. Lagñel's draft here for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it.

Very truly, yours,

D. J. GARTH, *Treasurer.*

I inclose letter from your friend.

(P. 322.)

The letter book has been used with great effect by Mr. Foster in his able argument below on the facts. He shows, from the letters of the company's superintendents, the absurdity of the claim for lost ores. (Pp. 93–111). As to the claim for lost profits, Mr. Foster demonstrates, from Exall's letter of August 6, 1867, that the company were suffering a loss of $10.28 *on every ton of ore reduced!* (P. 104). *Ex pede Herculem!*

In the light of this letter book, the course of the company and its agents is in perfect harmony with our experience of human conduct. It is natural that the company should have finaliy concluded to

wash its hands of the adventure, and stop sending good money after bad, if its affairs were in the condition displayed in the letter book; on the other hand, upon the claimant's theory of the richness of the mines, its conduct is inexplicable according to any known test of human motive.

So impressed were the Committee on Foreign Relations of the Senate by the letter-press copy book as an instrument of evidence that in their thorough and able report, to accompany Senate bill No. 2632, Fiftietl. Congress, second session, made on March 1, 1889, they use the following emphatic language with reference to the contents of that book:

> In the opinion of the committee, the correspondence between the company's superintendents and agents at the mines in Mexico and the managing agent of the company in New York, accompanying this report, is sufficient, considered alone, to show the whole claim of the company to be fraudulent, and the claimant's testimony before the Mixed Commission, so far as it tended to fix the responsibility for the company's loss upon the Mexican Government, to have been rank perjury to show that the company had abandoned its mines because they did not pay for working; that the officers and agents of the company in New York had refused to furnish any more money to the superintendents at the mines, and that the company was bankrupt.
>
> The idea of making a claim against the Mexican Government by the company, judging from this corresponence, appears to have been conceived long after the abandonment of the mines by the company, to have been a gross fraud in its inception, to have been based upon fraudulent allegations supported by false swearing and manufactured testimony; and it is impossible, in the face of the correspondence covering the period when the company was making preparations to work its mines in Mexico and while they were being worked, to conceive that the officers and agents of the company in New York were not active participants in the fraud. (S. Report No. 2705, Fiftieth Congress, second session, pp. VII, VIII.)

The story of disaster and mismanagement in the

letter book is epitomized by appellant's witness, Garth. Having spoken of the constant drain upon the company by the mines, and been asked if "there was no return current from the mines to the company," he replied: "NONE, EXCEPT A LITTLE PIECE OF BULLION SILVER THAT CAME FROM THERE. I THINK IT BROUGHT ABOUT $300." (P. 717.)

In accord with this are complainant's witnesses, De Lagñel, Sundell, and Francisco Torres, to whom we now turn.

Soon after De Lagñel reached the mines an assay was made "which was very satisfactory, so as to give us high hopes." (P. 484.) There was another one after the new mill was started, which was satisfactory, but "*nothing comparable with the other.*' (*Ib.*)

The result was that up to the time De Lagñel left "*the yield had been gradually diminishing*," "*the same amount of rock was taken out, but not the same amount of silver ore*" (p. 483), or, as the Mexican witnesses say, it was mostly *tepetate* or worthless ore that was dug out by these ignorant miners to be crushed in the new mill.

Of the mines purchased, La Abra was regarded by Garth "*as the treasure house.*" (P. 487.) De Lagñel tells us the sort of "treasure house" it was. Being asked if any work was done in La Abra in his time, he gave this dismal reply:

> There was no work done there save on one occasion, when I

ordered the head miner, *when we found the metal beginning to be exhausted*, to go into the La Abra to see what he could get, and if it were possible to put the gang of men there with results. *He picked up a few little pieces of ore and came back and said nothing could be done.* (P. 487.)

And yet the distinguished umpire says there was "*nothing rash*" in the claimant's adventure!

Frederick Sundell, a Swedish mining engineer, who was assayer for the Durango company from 1865 to the end of 1868, and resided at San Dimas (p. 517), and was familiar with the mineral district of Tayoltita and knew Exall well, says the reason Exall left "*was because the mine did not pay to work, and the company would not furnish him any more money*," and that such was the general understanding among Americans and Mexicans. (P. 522.)

Exall never brought any results to witness's attention after the mill began to work. (P. 523.) What are we to think, then, of Exall's testimony that he beneficiated 20 tons of ore, with a result of $17,000, shortly before his *flight?* Evidently Sundell never heard of it. On the contrary, he tells us that when he revisited the company's hacienda in 1890 he found that the ores that Exall had piled up there had been *thrown into the river as so much rubbish.* (P. 525.)

The evidence of Francisco Torres is especially satisfactory. The witness was 66 years old, was born in San Dimas, and has lived there always, and had been a miner for the twenty-five years then last

past. (P. 547.) He was employed by Del Valle and Manjarrez as a refiner, and says that they got good results from El Rosario, which yielded rich but not abundant ores, but that it ceased to pay to work it (pp. 548 and 553), and that it had been abandoned for two years at the time of the sale. (P. 553.) But La Abra Company did not work that mine at all. The Abra mine was denounced by Manjarrez, after the claimant abandoned work there, but he died without accomplishing anything.

La Luz had a spurt of success, and Garth and Bartholow arrived on the scene just in time to become its victims; but soon this yield degenerated to worthless *tepetate*, which was the character of the ores that Exall got from there and left piled up at the hacienda, and for which a huge indemnity is demanded in the memorial. (P. 550.)

The witness says that Del Valle and Manjarrez lost $40,000 in trying to extract wealth from La Luz. (P. 548.) The witness speaks with the feeling of one who from his own had "learned to melt at others' woe," for he confesses to having lost $9,000 by yielding to the deceptive appearances of that mine after it "had been abandoned by the Americans." (P. 554.) Says the witness: "*The result was that I lost money and abandoned the mine.*" (*Ib.*)

The whole business of mining is manifestly precarious, a mere lottery. A rich vein may be struck, but whether it means profit or disappointment no

one can tell. As the distinguished umpire said, "It may be great, small, or nothing, and may be but *a mere snare to lead one on to utter ruin.*" In these pithy words we have an epitome of all that has been written about the uncertainties which beset this branch of industry.

A labored attempt was made in the court below to show that Sundell and Torres are unworthy of belief, and, we assume, will be repeated here.

Our estimate of the attempt and our reply to it may be indicated by a citation from Starkie:

> It is here to be observed that partial variances in the testimony of different witnesses on minute and collateral points, *although they frequently afford the adverse advocate a topic for copious observation*, are of little importance unless they be of too prominent and striking a nature to be ascribed to mere inadvertence, inattention, or defect of memory. (Ev., vol. 1, 468.)

But there is a serious side to the attack to which the quotation does not point, and which can not be passed over.

It was sought, in argument, to impeach Sundell and Torres, by showing discrepancies, so called, between their depositions in this suit and depositions which had been previously given by them elsewhere, without having called their attention, on cross-examination, to the alleged discrepancies and given them an opportunity to explain.

This court has strongly condemned such a practice *under all circumstances.* (*Mattox* v. *United States*, 156 U. S., 237, 244–250.)

It may be asked, before turning to another mat-

ter, whether any disparagement of appellee's witnesses could possibly benefit appellant so long as the letter book, the testimony of Treasurer Garth to the failure of the adventure and the incompetency of its managers, and *the testimony of appellant's own conduct before a motive existed to fabricate the claim*, all bear witness in support of the bill.

EXALL'S EXPLANATORY AFFIDAVIT.

The Weil and La Abra awards being before Congress in connection with charges of fraud, Gen. James E. Slaughter, as agent of Mexico, printed and circulated freely among the Members of both Houses of Congress a pamphlet containing a petition setting up fraud in the awards, and, *inter alia*, extracts, more or less full, from the correspondence in the letter book, and also copies of certain letters from Garth to Exall and from Exall to Granger. (Pp. 668–671.)

This correspondence, the Senate committee say, was alone sufficient to establish the fraudulent character of the claim, and, unexplained, certainly destroyed the testimony of Exall, which, notwithstanding the attempt to belittle it, is the mainstay of the case, and comes right home to the claimant. It will be remembered that it was during his service as superintendent that occurred the alleged cruelties and persecutions which *drove* La Abra out of Mexico.

The consternation caused by the explosion of the Slaughter petard is easily read between the lines of the deposition of Mr. Sumner Stow Ely, taken in this suit. Mr. Ely was here—in Washington—at the time, attending to the business of the company, and appears to have been prompt in trying to meet the crisis.

He was the general counsel of the company and drew the articles under which it became a corporation, and we gather from his testimony that his experience as a lawyer in the city of New York had been considerable.

The question naturally suggests itself, what an intelligent lawyer, representing a large claim which he believed to be just and supported by honest testimony, would have been likely to do under the same circumstances?

Would he not have taken prompt steps to examine Exall, with full opportunity to Mexico and the United States to be present and participate in the examination?

This, however, Ely did not do. On the contrary, he took perhaps as suspicious and as irregular a course as could well be imagined. He posted off to New York to see Exall, *with some notes or memoranda* in his pocket of things stated in the letters printed in the Slaughter pamphlet, and when asked why he did not take with him a copy of the

pamphlet itself for Exall's information, gave this silly reply:

> One of these pamphlets fell into the hands of Mr. Bartholow, who showed it to me. I could not take it to New York with me, because he had to return it to the gentleman who gave it to him. *So that I had to tell him [Exall] what the contents were.* (P. 660.)

When examined before the Senate committee he merely said that he left the pamphlet in Washington, making no reference whatever to Bartholow and his refusal to let him take the pamphlet with him to New York. (P. 661.)

When pressed to disclose why he had not procured a copy of this pamphlet strewn in the halls of Congress, he makes the puerile and manifestly untruthful answer that he "could not go around at random to the Members, perfect strangers, and ask them if they had a copy to let me have." (P. 662.) A shy, faint-hearted New York attorney, indeed! *Rara avis in terris, nigroque simillima cygno!*

But, what is more remarkable still, the resourceful Bartholow could, apparently, neither beg nor borrow nor *purloin* a copy of Slaughter's precious compilation for use in New York!

When asked if he thought he was doing a proper part by his client not to secure a copy of the pamphlet for Exall's information, he made this absurdly untrue answer:

> I believed I could tell him substantially enough about those letters so that he would know whether he ever wrote them or

not; and if he did, whether there was any explanation that he could give. (P. 662.)

According to Mr. Ely, Exall, with no more information of the contents of these letters, so vitally concerning him, than he had received from Ely, went to work and prepared an affidavit whose object was to explain away the contradictions between letters which he had not seen and might not have written and his testimony before the commission.

The substance of this affidavit is that all letters of deponent's conflicting with his testimony were the result of an understanding between him and the abandoned Granger to induce the company to give up the adventure as hopeless that they might take hold of it themselves, it being evident to them, deponent pretends, that the company would not be allowed to keep its footing much longer in Mexico.

Of course the original of that affidavit, as the Adams contract, has disappeared from the files of the Senate Foreign Relations Committee, *and a copy made by Ely* is produced to take its place.

It is unnecessary to examine that scandalous document with particularity. No statement emanating from that source is entitled to the slightest respect or consideration. Indeed, Mr. Ely's account of the manner in which the affidavit was made is alone sufficient to show that the deponent was a mere tool in his hands.

Recurring to the deposition of Sumner Stow Ely,

the witness says that all he had to do with the preparation of Exall's affidavit was to suggest a change of its order, so as to make it more connected.

We regret to say, however, that we are not inclined to accept this *modest* disclaimer of Mr. Ely's, for the strange account he gives of himself in connection with the Slaughter pamphlet more than warrants the suspicion that he and he alone concocted the affidavit and that Exall *blindly swore to it.* We do not believe that Exall was capable of writing the affidavit.

If our suspicion that the original was in Ely's handwriting could be confirmed, there might not be much difficulty in accounting for its disappearance.

We do not incline to the opinion that Mr. Ely would have done anything so idiotic as to attempt to get Exall's explanation of his letters without first putting the Slaughter pamphlet in his hands. He knew that according to the usual and proper course Exall should meet and explain each of the letters in the Slaughter pamphlet attributed to him, but this he knew also would be full of peril, *as the explanations must needs be false, and as the greater the particularity the greater would be the chances of detection;* so he made up the absurd story of his inability to get a copy of the pamphlet to take to New York, in order to account for the sweeping language of the affidavit and its failure to notice the letters with particularity.

Now when it is remembered that Sumner Stow Ely occupied the fourfold relation to the company of counsel, secretary, treasurer, and stockholder, it would seem impossible to hold the company to be without responsibility for the perjury committed by him in connection with the Slaughter pamphlet.

EXALL'S LETTERS TO GRANGER.

These letters do not, it is claimed, stand on the same footing as the letters in the letter book from the officers of the company appertaining to its business, for the latter are the very words of the company itself, and where they contain statements against the interest of the company are undoubted evidence; but it is contended that the letters in question do not appertain to the company's business and are not evidence any more than other statements of third parties not made under oath.

But are they not admissible for the purpose of contradicting and impeaching Exall's evidence? They certainly contain statements directly in conflict with his testimony. Exall was informed of them and no doubt saw them, for they are printed in full in the Slaughter pamphlet, and then made the affidavit in which he attempted to explain away the discrepancies between them and his evidence, thus laying the foundation for their introduction as completely as though he had been put on the stand and asked if he had written them.

There is nothing more telling in the case than the conduct of the stockholders who had advanced considerable sums to the company after De Lagñel's report to the company on his return to New York. What that report was can be readily inferred from Garth's letters to Exall of May 30 and June 10, 1867 (pp. 383, 384), in which the writer despairs of success in the enterprise, and says that De Lagñel's account "*was most unexpected and a fearful blow to our hopes.*"

It was in May that De Lagñel returned to New York (p. 482), and on the 8th of the following month John H. Garth, representing himself and the other stockholders who had made advances, instituted a suit against the company in his own name in the supreme court of New York for the sum of $53,653.50, and recovered a judgment *by default* for that amount on July 3, 1867. (Pp. 465–470.)

We pause for a moment to look at some of the facts connected with that proceeding. The suit was brought by the standing counsel of the company, Britton & Ely, the latter of whom, no doubt, would have considered it far from businesslike to continue to stand by a bankrupt client when a fee could be made by going over to the creditors who were hunting it down.

The complaint and notice to answer were served

on the treasurer of the company, David J. Garth, who, together with George C. Collins, the president, had *nominally* transferred to the plaintiff his demand against the company, the two thus *appearing* to have no interest in the suit adverse to the company, when in fact *they were covertly plaintiffs*, Collins to the extent of $22,235.57, and Garth to the extent of $1,990.40, at least.

The voice of the company being thus *stifled* by this conspiracy between the Garths, Collins, and Ely, a judgment by default against the defendant was, of course, the result. It was a judgment, however, which the court would have promptly set aside on being made acquainted with the circumstances in which it was rendered. It was obviously a *fraud* on those of the stockholders who had not been engaged in throwing good money after bad, and was intended as the basis for the enforcement against them of a personal liability for the debts of the company under the law of New York (Rev. Stat., vol. 3, § 10, p. 735, ed. 1863, by Edmonds), which made each stockholder of a mining company personally liable to an amount equal to that of the stock held by him so long as the capital of the company was not fully paid up. The capital of La Abra Company was fixed by its charter at $300,000, but Ely testified before the Senate committee that "there was a quantity of stock that was never issued" (Sen. Rep. No. 2705, p. 964), and the offi-

cial reports of the company show this to be the fact. (Pp. 463–465.) In a word, this mock suit was a fitting prologue to the drama of fraud that was soon to follow.

This rush for a plank on which to save themselves from the sinking ship tells the whole story. It was the act of desperation which might have been expected of such men. It was the culmination of a scheme that was conceived in folly. It was a confession of record by those who had control of the company that their hopes and expectations had been wrecked. It was a formal declaration of the company's insolvency. It was "a brief chronicle and abstract of the times" at Tayoltita, which fully accounts for Exall's departure from that hamlet without the necessary cash to take him to New York. It shows to a demonstration that before Exall's *persecutions* had begun the company was beggared and already too far gone to be affected by the violence of enemies.

GREAT SIGNIFICANCE OF SOME SMALL FACTS.

The circumstances connected with Exall's final departure from the mines, noticed above here and there, have irresistible force when taken together.

1. He left the mines with certain "*American friends*," but who they were is *still unknown*. The failure to produce these "friends" or account for

their absence is irreconcilable with the honesty of the claim and amounts to *suppressio veri.*

2. When Exall reached "Mazatlan" in his so-called *flight*, he borrowed $250 from Mr. Peña to take him home. Does not this little circumstance tell the story of the abject penury that existed at the mines? Is it probable that he would have borrowed that small sum if he had not needed it? Peña & Co. were the concern with which La Abra had been doing a large amount of business, and if Exall had not stood in need of the money, but had intended to swindle these friends of his and the company, he might easily have obtained a larger sum, especially as the company did not owe the concern a cent, as Mr. Peña himself says. (P. 103.)

3. Although Mr. Peña was examined by the company (pp. 102, 103), he was not asked to state what Exall said with reference to his *flight* when he borrowed the money. It is most damaging that no witness was examined in Mazatlan to reproduce the story that Exall must have told when he reached that point, if he had any story to tell.

4. Exall, when he arrived at Mazatlan, did not go before the American consul and make a declaration or protest of the outrages which, it is claimed, had been inflicted on him and the company.

5. When he got to San Francisco he neither made a protest nor telegraphed the company that he had been driven from the mines, although it

would be at least a month before he could make the circuitous journey to New York by way of the Isthmus.

6. When he surprised the company by his appearance in New York he was still without any written statement of what had occurred, and made no such statement *until a year and nine months* after his pretended expulsion from the mines, when he gave his first deposition. It nowhere appears that he had even taken the precaution of making memoranda of the matters to which his depositions relate.

7. Shortly after Exall's return to New York in the spring of 1868 he met De Lagñel there, and in July, 1868, visited him at Fort Hamilton, but De Lagñel testifies that he had *no conversation with Exall as to the condition of affairs at the mines or his reason for leaving there.* (P. 491.)

How truthful, how overwhelming is *this language of Exall's conduct!* It is a testimony which completely supports the letter book, and makes plain many things that, upon appellant's theory, require a miraculous solution.

The testimony thus furnished by Exall's *conduct*, so to speak, was given before the Abra Company had any thought of urging a claim against Mexico; indeed, except in so far as it relates to De Lagñel, before the company had heard of its so-called expulsion. It therefore enjoys the merit of having been

given at a time when there was no motive for misrepresentation, whereas the depositions were taken after the claim was started, and, what is more, under the auspices of Sumner Stow Ely and Alonzo W. Adams.

To these small facts may be added another of some significance. When Ely met Exall in the street soon after his return to New York, he expressed surprise at seeing him, and remarked that he "supposed he [Exall] was in Mexico, making silver bricks for La Abra Company," thus showing that he, Ely, had heard nothing of the so-called reign of terror at Tayoltita and was entirely at a loss to know what had brought Exall back. (P. 655.) If Exall was driven out of Mexico, as he pretends, it seems impossible that he should have broken the news to Ely, as the latter swears, by flippantly remarking "*that he had been compelled to skip out between two days.*" (P. 655.)

Can any man read Ely's account of what passed between him and Collins, the first time they met after Exall's return, without at once concluding that it is a sheer fabrication? Here it is:

> Answer. About May, 1868, I was going down Wall street and I met George C. Collins, who was then president of La Abra Company, *and I stopped and chatted with him a moment*, and he said to me, "*Do you know Exall is back?*" I said, "Yes; he called on me *a few days ago.* He said, "*I suppose* he told you what brought him back and the shape of things down there." I said. "Yes; *in a general way.*" *I did not have time to get many details from him.* He said, "Things are in pretty bad shape down there, are they not?" I said, "I should think they were,"

and he said, "What can the company do about it?" I replied that to seek redress from a foreign government was a long, tedious, and, I had no doubt, an expensive proceeding, and I thought the company would have to charge the whole thing over to profit and loss. (Pp. 654, 655.)

Exall had been back "*a few days*," and yet the *first* meeting of the counsel of the company and its president was *a casual* one in Wall street! The counsel had heard about matters at Tayoltita "*in a general way*," but didn't have time for "*many details*"! Is not this rank perjury?

FRAUD AND PERJURY BROUGHT HOME TO THE COMPANY.

The *very memorial itself* filed before the Commission was a *conscious act of fraud* on the part of the company, which necessarily knew by the reports it had received from its superintendents at the mines, as shown by the letter book, that, aside from certain conceded facts, each paragraph of the document was false. Apparently the officers of the company shrank from swearing to it or stamping it with the common seal. The president, Mr. George C. Collins, had not yet been taught by Mr. Sumner Stow Ely that he had capabilities as an affidavit maker which were equal to any he possessed as tea merchant or vestryman. Accordingly the memorial was verified by the affidavit of one who signed it as counsel, and who describes himself as "*attorney in fact*," and refers to the memorialist as "*now absent from the District of Columbia*," a peculiar statement,

considering that the memorialist was a New York corporation and, according to a well-understood principle, could not have been anywhere else than in that State.

We are aware that under the rules of the Commission a memorial might be verified by an attorney in fact, in case of the memorialist's absence from the District, but it is extremely improbable that a claimant would be satisfied with such a verification of an *honest* claim for $3,000,000 against a foreign government.

But the verification of the memorial here was a fraud on the rule—first, because the "attorney in fact" swears that the statements of the memorial are true "*so far as they are stated from his own knowledge*," and that he believes them to be true "*so far as they are stated upon information derived from others*," whereas all the allegations of the memorial are stated as absolutely true, and it not appearing what was sworn to from knowledge and what from belief, it resulted that the memorial was *not verified at all;* and secondly, because, according to the evidence (p. 707), the counsel, who describes himself as "*attorney in fact*" in the jurat, only held the relation of attorney at law to the company.

Obviously, these circumstances connected with the affidavit have a tendency to show fraud in the conception of the claim.

So this great claim was presented to an interna-

tional tribunal with less solemnity than a New York corporation would be expected to use in bringing suit for a small debt in some petty court!

According to the annual reports of the company, required by the law of New York, it appears that in 1866 the amount of capital paid in was $76,000, and that the amount paid in for each of the years 1867 and 1868 was $157,000. (Pp. 463–465.)

But when Mr. Collins, the president of the company, came to make his first affidavit in support of the memorial, in 1870, he stated that the company had obtained "from subscriptions for and sales of its stock two hundred and thirty-five thousand dollars." (P. 38.)

After Collins's death, which occurred in February, 1875, attention having no doubt been called to the discrepancy between the annual reports of the company and the deposition of Collins as to the amount of capital paid in, Mr. Sumner Stow Ely, in January, 1877, caused a report of the company to be made stating the amount of cash capital at the sum named by Collins. But no explanation is offered for the change. This report was the first that had been filed *in nine years.*

An explanation was attempted in Ely's testimony before the Senate committee and in this case, from which it appears that *Ely drew Collins's affidavit*, and that the amount of the capital paid in was stated by Collins at $235,000 as the *currency* equivalent of

the $157,000 originally paid on the stock *in gold.* Among the *data* furnished by Collins for the affidavit was, *Ely says*, the fact that the company kept, for some unassigned reason, a gold and a currency account of the stock subscriptions. But Mr. Ely does not say why the fact thus furnished him was not carried into the affidavit he prepared for Collins to swear to. There can be no doubt, however, that the information was withheld to leave the way open for the fraudulent contention that the sum of $235,000 represented *gold*, which was at a considerable premium at the time Collins and Ely concocted the affidavit, in September, 1870.

It was a fraud on the Commission and the umpire not to state that the amount of $235,000 was a valuation of the capital stock in a fluctuating paper currency, so that any award for the claimant on account of stock might be adjusted to the relation between the debased currency and gold and it is equally a fraud for this company, now that the currency is at par, to be making "continual claim" at the Treasury door for $235,000, in gold, as indemnity for the loss of $157,000, in gold.

Clearly the company is directly implicated in this double fraud.

It would seem impossible to deny successfully the responsibility of the Abra Silver Mining Company for the miscarriage of justice brought about

by the perjury and other corrupt practices of Bartholow, Adams, Sisson, Ely, Collins, Exall, and others, as hereinbefore particularly stated, unless it be held that such practices by agents and officers of a corporation, acting in its name and behalf, can never affect it. That, however, is impossible, because Congress, by the act of 1892, has made it the law of this case that the company shall not profit by the corrupt acts, if any, of its officers or agents in obtaining the award out of which this controversy has grown.

But whether the company was actually or constructively aware of the methods that were being used by its agents or attorneys, it is clearly inadmissible for it to repudiate their frauds and perjuries on the one hand and demand the fruits of them on the other. Under the familiar principle of ratification, the company can no more evade the justice of this suit than if it had expressly authorized the fraudulent practices by which the award was obtained. In a word, the company has made the fraud of its agents its own. As this court says in *Castle et al.* v. *Bullard* (23 How., 172, 189): It does not lie with one to claim property through the fraudulent act of another, whether partner or agent, *without being affected by that act the same as if it were his own.*

If this discussion has been much drawn out, it should be remembered that the subject handled has

given this Government and the Republic of Mexico profound concern for nearly a score of years, and that the decision of the issue involved will certainly be felt in the relations between the two Governments.

WM. A. MAURY,
Special Assistant to the Attorney-General.

APPENDIX A.

AN ACT to amend and enlarge the act approved June eighteenth, eighteen hundred and seventy-eight, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the fourth day of July, eighteen hundred and sixty-eight."

Whereas the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of La Abra Silver Mining Company, has heretofore reported that the "honor of the United States requires" that said case "should be further investigated by the United States, to ascertain whether this Government has been made the means of enforcing upon a friendly power claims of our citizens based upon or exaggerated by fraud," but that "the executive Government is not furnished with means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses," and that "the authority for such an investigation must proceed from Congress;" and

Whereas the President of the United States has transmitted to Congress the recommendation of the Secretary of State that said case "be referred to the Court of Claims, or such other court as may be deemed proper, in order that the charge of fraud made in relation to said claim may be fully investigated:" Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in further execution of the purpose of said act the Attorney-General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the

whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who can not be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

SEC. 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

SEC. 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

SEC. 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has

not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

SEC. 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company, or its legal representatives, attorneys, or assigns; and in case it shall be finally adjudged in said cause either in the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto.

Approved, December 28, 1892. (27 Stat., p. 409.)

APPENDIX B

ACTS OF CONGRESS APPROVED DURING "HOLIDAY RECESSES," 1862-1897.

Public, Ch. 4, Dec. 25, 1862 (12 St., 632):
An act to amend an act entitled "An act to provide internal revenue to support the Government and to pay interest on the public debt," approved July 1, 1862.

Public, Ch. 5, Dec. 27, 1862 (12 St., 633):
An act to facilitate the discharge of disabled soldiers from the Army, and the inspection of convalescent camps and hospitals.

Public, Ch. 6, Dec. 31, 1862 (12 St., 633):
An act for the admission of the State of West Virginia into the Union, and for other purposes.

Public, Ch. 5, Dec. 26, 1866 (14 St., 374):
Land grants to Oregon. An act to amend an act entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Eugene City to the eastern boundary of said State."

Public, Ch. 4, Dec. 22, 1868 (15 St., 266):
An act to amend an act entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes," approved July 20, 1868.

Private, Ch. 5, Dec. 22, 1869 (15 St., 435):
An act to relieve certain persons of all political disabilities imposed by the fourteenth article of the amendments to the Constitution of the United States.

Public, Ch. 4, Dec. 23, 1869 (16 St., 61):
An act making appropriations to partially supply deficiencies in the appropriations for the service of the fiscal year ending June 30, 1870.

Public, Ch. 5, Dec. 23, 1869 (16 St., 61):
An act making a temporary appropriation for the preservation of the work upon the improvement of the Des Moines Rapids in the Mississippi River.

Joint Resolution No. 5, Dec. 23, 1869 (16 St., 368):
Claims for steamboats, etc., impressed into the military service of the United States.

Joint Resolution No. 6, Dec. 23, 1869 (16 St., 368):
Joint resolution of tribute to the memory of George Peabody.

Public, Ch. 12, Dec. 24, 1872 (17 St., 400):
An act authorizing the construction of railroad bridges across the Mobile River and other navigable streams tributary to Mobile Bay, in accordance with the acts of the legislature of the State of Alabama, and to establish them as post roads.

Public, Ch. 13, Dec. 24, 1872 (17 St., 401):
An act for the reduction of officers and expenses of the internal revenue.

Public, Ch. 14, Dec. 24, 1872 (17 St., 404):
An act to provide for holding adjourned terms of the supreme court of Arizona.

Public, Ch. 15, Dec. 24, 1872 (17 St., 404):
An act to authorize the National Bank of Lyons, Michigan, to change its location and name.

Public, Ch. 17, Dec. 27, 1872 (17 St., 404):
An act to quiet the title to certain lands in the State of Missouri.

Joint Resolution No. 1, Dec. 24, 1872 (17 St., 637):
A resolution extending the time for the presentation and selection of models of a colossal statue of the late Admiral Farragut.

Public, Ch. 3, Dec. 31, 1873 (18 St., 1):
An act making appropriations for extraordinary expenses of the naval service. (In all, amounting to $4,000,000.)

Private, Ch. 2, Dec. 27, 1873 (18 St., 529):
An act to remove the disabilities of Thomas S. Bocock, E. J. Harvie, and Daniel Trigg, of Virginia, and John H. Reagan, of Texas.

Private, Ch. 4, Jan. 3, 1874 (18 St., 529):
An act to correct the enrollment of an act entitled "An act for the relief of P. W. Standefer."

Public, Ch. 7, Dec. 24, 1874 (18 St., 293):
An act reserving for the use of Congress one hundred and fifty copies of the Revised Statutes authorized to be printed by the act of June 20, 1874.

Public, Ch. 8, Dec. 28, 1874 (18 St., 293):
An act to enable the supreme court of the District of Columbia to proceed with jury business.

Public, Ch. 9, Dec. 28, 1874 (18 St., 293):
An act to provide for the authentication of the Revised Statutes of the United States and for preserving the originals of all laws in the Department of State.

Public, Ch. 10, Dec. 28, 1874 (18 St., 294):
An act for the relief of certain settlers on the public lands.

Public, Ch. 12, Jan. 1, 1875 (18 St., 294):
An act suspending so much of the act entitled "An act reorganizing the several staff corps of the Army," approved June 23, 1874, as applies to contract surgeons.

Public, Ch. 1, Dec. 24, 1875 (19 St., 1). Cong. Rec., Forty-fourth Congress, first session, pt. 1, p. 250. Recess Dec. 20–Jan. 5, 1876:
An act to extend the duration of the Court of Commissioners of Alabama Claims.

Joint Resolution No. 1, Dec. 21, 1878 (20 St., 487):
Joint resolution providing for the distribution of the Revised Statutes of the United States to the Post-Office Department.

Joint Resolution No. 2, Dec. 21, 1878 (20 St., 487). Cong. Rec., Forty-fifth Congress, third session, pt. 1, p. 340. Recess Dec. 20–Jan. 7, 1879:
Joint resolution making an appropriation for the purpose of paying the necessary expenses incurred in investigating the origin and cause of epidemic diseases in the United States.

Joint Resolution No. 3, Dec. 21, 1878 (20 St., 487):
Joint resolution extending time for Joint Committee on Transfer of Indian Bureau to report.

Public, Ch. 1, Dec. 20, 1879 (21 St., 59):
An act authorizing an allowance for loss by leakage or casualty of spirits withdrawn from distillery warehouses for exportation.

Public, Ch. 2, Dec. 22, 1879 (21 St., 59):
An act relating to printing impressions from portraits and vignettes.

Private, Ch. 3, Dec. 24, 1879 (21 St., 531):
An act for the relief of Herman Hulman and Crawford Fairbanks, of the city of Terre Haute, Ind.

Public, Ch. 4, Dec. 23, 1880 (21 St., 311):
An act to authorize the Secretary of the Treasury to change the name of the yacht *Stephen D. Barnes*, of Philadelphia.

Public, Ch. 5, Dec. 23, 1880 (21 St., 312):
An act to provide a suitable pedestal to the monument erected in honor of the late Admiral Farragut in Washington City.

Public, Ch. 6, Dec. 23, 1880 (21 St., 312):
An act to change the name of the schooner-yacht *Nettie* to *Nokomis*.

Public, Ch. 7, Dec. 23, 1880 (21 St., 312):
An act amending section 1852 of the Revised Statutes of the United States. (Sessions of Territorial legislatures limited to sixty days.)

Public, Ch. 8, Dec. 23, 1880 (21 St., 312):
An act to amend an act entitled "An act to incorporate the National Fair Grounds Association."

Public, Ch. 9, Dec. 23, 1880 (21 St., 313):
An act granting permission to the Chamber of Commerce of New York to erect a statue on the subtreasury building in the city of New York.

Public, Ch. 10, Dec. 23, 1880 (21 St., 313):
An act to authorize the construction of a fixed bridge over the St. Marys River, and for other purposes.

Private, Ch. 11, Dec. 23, 1880 (21 St., 601):
An act granting an increase of pension to J. J. Purman.

Private, Ch. 12, Dec. 23, 1880 (21 St., 601):
An act for the relief of Charles W. Abbot, a pay director, and W. W. Barry, a passed assistant paymaster in the United States Navy.

Private, Ch. 13, Dec. 23, 1880 (21 St., 602):
An act granting an increase of pension to Mrs. Julia Gardiner Tyler, widow of Ex-President Tyler.

Private, Ch. 14, Dec. 23, 1880 (21 St., 602):
An act increasing the pension of Margaret S. Heintzelman.

Joint resolution No. 3, Dec. 26, 1883 (23 St., 265):
Joint resolution relating to the surrender by George Washington of his commission as commander in chief of the patriot forces of America.

Public, Ch. 7, Dec. 27, 1884 (23 St., 280):
An act detaching Grundy County, Tenn., from the southern division of the district of East Tennessee and attaching it to the middle district of said State, and for other purposes.

Private, Ch. 6, Dec. 25, 1884 (23 St., 615):
An act for the relief of Juliet H. Palmer.

Joint resolution No. 2, Dec. 26, 1885 (24 St., 339):
Joint resolution filling existing vacancies in the Board of Regents of the Smithsonian Institution.

Joint resolution No. 3, Dec. 26, 1885 (24 St., 339):
Joint resolution authorizing the Secretary of the Interior to use a portion of the contingent fund to fit up rooms for the Commissioner of Patents.

Private, Ch. 1, Dec. 26, 1885 (24 St., 653):
An act for the relief of Alexander R. Lawton, of the State of Georgia.

Private, Ch. 2, Dec. 26, 1885 (24 St., 653):
An act granting a pension to Julia D. Grant.

Public, Ch. 9, Dec. 23, 1886 (24 St., 353):
An act amending sections 4756 and 4757 of the Revised Statutes, relating to pensions to certain disabled persons who have served in the Navy and Marine Corps.

Public, Ch. 11, Jan. 3, 1887 (24 St., 354):
An act providing for the erection of a public building at Springfield, Mass.

Public, Ch. 12, Jan. 3, 1887 (24 St., 354):
An act to amend section 4414 of the Revised Statutes, relating to inspectors of hulls and boilers.

Public, Ch. 13, Jan. 3, 1887 (24 St., 354):
An act to amend an act entitled "An act to modify the postal money-order system, and for other purposes," approved March 3, 1883.

Public, Ch. 14, Jan. 3, 1887 (24 St., 355):
An act to extend the free-delivery system of the Post-Office Department, and for other purposes.

Public, Ch. 15, Jan. 3, 1887 (24 St., 356):
An act to authorize the construction of a bridge across the St. Louis River at the most accessible point between the States of Minnesota and Wisconsin.

Public, Ch. 16, Jan. 3, 1887 (24 St., 358):
For the relief of Myron E. Dunlap.

Private, Ch. 10, Dec. 23, 1886 (24 St., 881):
An act for the relief of Henry Martin.

Private, Ch. 17, Jan. 3, 1887 (24 St., 882):
An act for the relief of Pattison and Caldwell.

Private, Ch. 18, Jan. 3, 1887 (24 St., 882):
An act for the relief of the survivors of the exploring steamer *Jeannette* and the widows and children of those who perished in the retreat from the wreck of that vessel in the Arctic seas.

Private, Ch. 19, Jan. 3, 1887 (24 St., 883):
An act for the relief of Grafton Monroe.

Private, Ch. 20, Jan. 3, 1887 (24 St., 884):
An act granting a pension to Mrs. Barbara Fuchs.

Public, Ch. 7, Dec. 22, 1888 (25 St., 638):
An act making appropriations to supply a deficiency in the appropriation for public printing and binding for the fiscal year ending June 30, 1889, and for other purposes. (This includes an appropriation for observing an eclipse of the sun.)

Public, Ch. 8, Dec. 24, 1888 (25 St., 638):
An act authorizing the President to appoint and retire Andrew J. Smith, late colonel of the Seventh United States Cavalry and a major-general of volunteers.

Public, Ch. 18, Jan. 1, 1889 (25 St., 639):
An act granting to Citrous Water Company right of way across Papago Indian Reservation in Maricopa County, Ariz.

Private, Ch. 9, Dec. 24, 1888 (25 St., 1251):
An act for the relief of George S. Thwing.

Private, Ch. 10, Dec. 24, 1888 (25 St., 1251):
An act to increase the pension of Mrs. Ella M. Grover.

Private, Ch. 11, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Mrs. Louisa Ward.

Private, Ch. 12, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Lemuel S. Skinner.

Private, Ch. 13, Dec. 24, 1888 (25 St., 1252):
An act granting a pension to Nancy A. Hays.

Private, Ch. 14, Dec. 24, 1888 (25 St., 1252):
An act granting an increase of pension to Caroline M. McDougal.

Private, Ch. 15, Dec. 24, 1888 (25 St., 1252):
An act for the relief of George W. Graham.

Private, Ch. 16, Dec. 25, 1888 (25 St., 1253):
An act granting a pension to Catharine Tate. (Became a law Dec. 25, 1888.)

Private, Ch. 17, Dec. 25, 1888 (25 St., 1853):
An act granting an increase of pension to William H. H. Welsh. (Became law Dec. 25, 1888.)

Public, Ch. 33, Dec. 26, 1890 (26 St., 698):
An act authorizing the city of Albany, in the county of Linn, State of Oregon, to construct a bridge across the Willamette River, in said State.

Public, Ch. 34, Dec. 26. 1890 (26 St., 700):
An act to authorize the Bowling Green and Northern Railroad Company to bridge Green and Barren rivers.

Private, Ch. 35, Dec. 26, 1890 (26 St., 1330):
An act granting a pension to Adele Jones.

Private, Ch. 36, Dec. 26, 1890 (26 St., 1330):
An act granting a pension to George H. Rider.

Private, Ch. 37, Dec. 26, 1890 (26 St., 1331):
An act for the relief of James B. Guthrie.

Public, Ch. 14, Dec. 28, 1892 (27 St. 409):
An act to amend and enlarge an act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868."

Public, Ch. 15, Dec. 28, 1892 (27 St., 410):
An act to amend and enlarge an act approved June 18, 1878, entitled "An act to provide for the distribution of the awards made under the convention between the United States of America and the Republic of Mexico, concluded on the 4th day of July, 1868."

Public, Ch. 16, Dec. 28, 1892 (27 St., 412):
An act to authorize the Alabama Grand Trunk Railroad Company to bridge across the Tallapoosa and Coosa rivers.

Joint Resolution No. 7, Dec. 25, 1893 (28 St., 577):
Joint resolution relieving the employees of the Record and Pension Office who were injured in the Ford's Theater disaster from the operation of the law restricting the amount of sick leave with pay that may be granted by heads of Departments.

Public, Ch. 8, Dec. 24, 1894 (28 St., 595):
An act to amend the act entitled "An act to authorize the construction of a bridge across the Mississippi River above New Orleans," approved January 26, 1893.

Public, Ch. 9, Dec. 24, 1894 (28 St., 596):
An act making appropriation to supply an urgent deficiency in the appropriation for the fiscal year ending June 30, 1895, for public printing and binding.

Public, Ch. 10, Dec. 24, 1894 (28 St., 596):
An act making appropriations to supply urgent deficiencies in the appropriations for the Eleventh Census, and for other purposes.

Public, Ch 11, Dec. 26, 1894 (28 St., 596):
An act to amend section 8 of the act entitled "An act to authorize the construction of a bridge across the Contentnea Creek, at Grifton, Lenoir County, N. C., and to establish it as a post-road," approved August 23, 1894.

Public, Ch. 12, Dec. 27, 1894 (28 St., 597):
An act to establish a military park at the battlefield of Shiloh.

Public, Ch. 14, Dec. 29, 1894 (28 St., 599):
An act to amend section 3 of an act to withdraw certain public lands from private entry, and for other purposes, approved March 2, 1889.

Public, Ch. 15, Dec. 29, 1894 (28 St., 599):
An act to perfect the title to a quarter section of land in the town of Yuma, Colo.

Private, Ch. 13, Dec. 27, 1894 (28 St., 1022):
An act for the relief of the legal representatives of James C. Booth.

Private, Ch. 16, Dec. 29, 1894 (28 St., 1022):
An act to pension Mrs. Ann Bradford, mother of William K. Bradford.

Private, Ch. 17, Dec. 29, 1894 (28 St., 1022):
An act for the relief of Dollie E. Vedder.

Joint Resolution No. 2, Dec. 24, 1894 (28 St., 967):
Joint resolution extending time for report of Board of Engineers surveying routes from Lake Erie to the Ohio River.

Public, Ch. 3, Dec. 29, 1897 (U. S. Statutes, Fifty-fifth Congress, second session, p. 226):
An act prohibiting the killing of fur seals in the waters of the North Pacific Ocean.

APPENDIX C.

EXTRACT FROM THE DEPOSITION OF CAPT. C. B. DAHLGREN, TAKEN BY THE SENATE FOREIGN RELATIONS COMMITTEE. (Sen. Rep. No. 2705, Fiftieth Cong., 2d Sess., pp. 643, etc.)

Q. Were the interrogatories propounded by the consul?—A. No, sir; they were not. They were propounded by Gen. A. W. Adams, all of the questions; none were proposed by the consul.

Q. I continue the reading:

Question 1st. What is your name, age, birthplace, citizenship, residence, and occupation?

Ans. My name is Charles B. Dahlgren; I am 32 years of age; I was born in Harttsville, in the State of Pennsylvania, in the United States of America, and I am a citizen of the same.

Q. Is that substantially your answer?—A. Yes, sir.

Q. Then it continues:

I reside in San Dimas, in the mineral district of the same name, State of Durango, Mexico. My occupation is that of assayer, machinist, mining engineer, and general superintendent of the Durango Mining Company, whose hacienda and works are at San Dimas.

Question 2d. Are you or not a son of the late Admiral Dahlgren, of the United States Navy, and are you consul of the United States for the State of Durango, Mexico, lawfully appointed and confirmed, and as such recognized by the United States and Mexican authorities?

Ans. Yes; the late Rear-Admiral John A. Dahlgren was my father, and I hold the position suggested in the question, and I am so recognized by said authorities.

A. Now, in reply to that will you allow me to state what I recollect on that point?

Mr. FOSTER. Yes.

The WITNESS. (Reading:)

"The late Rear-Admiral John A. Dahlgren was my father."

I never said that. To the question, "Are you or not a son of the late Admiral Dahlgren, of the United States Navy?" my reply was, "I am."

Q. I continue the reading:

Question 3d. Do you know, and have you visited and examined

the mines, haciendas, and the late works and improvements of "La Abra Silver Mining Company," claimant in this case?

Ans. Yes; I know them, and have visited and examined them.

Is that, according to your best recollection, the answer you gave?—A. I never examined La Abra Silver Mining Company, although I have been over the works.

Q. Did you testify on that examination that you knew them and had visited and examined them? Did you testify in answer to General Adams's question whether you had visited and examined the mines? In other words, is the answer correctly reported?—A. No, sir.

Q. State wherein it is imperfect.—A. In answer to the question, "Do you know and have you visited and examined the mines, haciendas, and the late works and improvements of La Abra Silver Mining Company," I said I had examined the hacienda, because I took portions of that machinery, but "the late works and improvements of La Abra Silver Mining Company" I never examined. I passed over one or two of the mines, but I never examined them.

Q. I continue reading question 4:

Question 4th. Where are said mines and property situated; and of what did said improvements of claimant consist, and in what condition are they now?

Ans. The principal mines of "La Abra Silver Mining Company" are in "La Abra" Mountain, near Tayoltita, in said district of San Dimas. Their names are "El Rosario," "El Cristo," "La Abra," "La Talpa," "El Arrayan," "El Sauce," and some others in that district, whose names I have forgotten.

Q. Is that a correct answer to the question as you gave it?—A. No, sir; because I didn't know what mines they possessed.

Q. Did you ever know, by name, the mines whose names are here given? Did you ever know whether or not they belonged to La Abra Company?—A. No, sir; I knew that La Abra mine belonged to the company. I had been at El Arrayan, but I didn't know the names of the rest of the mines belonging to the company.

Q. And you did not attempt to give the names in that examination?—A. No, sir; nor their condition.

Q. (Reading:)

The condition of those mines were good when the Abra Company abandoned them; but since that time some of them have fallen in, and filled up with débris, and it would require large expenditures of money to reopen them, and to put them in as good condition as they were when the "Abra Mining Company" abandoned them.

Did you make any such declaration as that?—A. No, sir; because I knew nothing about it.

Q. Did you know anything whatever of the mines that

La Abra Company abandoned?—A. No, sir; I did not; only about the mill.

Q. (Reading:)

The improvements of that company consisted of a ten-stamp mill of the first class, a suitable mill house for the same, two haciendas—the "St. Nicolas" and the "Guadalupe"—a large number of outhouses for the residences of the company's employees and their families, constituting, in appearance, a small village.

Did you testify upon that examination anything about the improvements of the company?—A. I testified that they had a mill. I stated what the machinery consisted of, and that they had a large building for the residence of the superintendent and the American employees, and a large patio covered with ore.

Q. Did you mention the names of the two haciendas?—A. No, sir.

Q. Did you know the names?—A. I did not.

Q. (Reading:)

Together with supplies of every kind needed for carrying on silver and gold mining, and for beneficiating the same on a very large scale, all being situated near Tayoltita, in the said district of San Dimas.

A. I knew nothing about any supplies that they had or what they had on hand, except that they had expended a sum of money, which had been wasted or thrown away, as I had heard.

Q. And you gave no testimony at that time in relation to the supplies they had on hand?—A. I told General Adams that I knew nothing about what supplies they had had on hand except the common hearsay of the district.

Q. (Reading:)

The stamp mill and machinery have been torn to pieces, and parts of them sold and leased out for use in other places, and by other parties than their owners.

A. I said that I had taken away a number of pieces of machinery and moved them over to San Dimas.

Q. (Reading:)

Question 5. Who claims ownership of the said mines, haciendas, machinery, stamp mill, and other improvements of said "Abra Company;" or, if you know, state who, if any person, assumes or exercises the right to dispose of the said property of claimant, either by absolute sale, or by leasing out the same for use in other places than Tayoltita, and without authority to do so from claimant in this case? Will you please state all you know in relation to any such sales or lease of the mining tools, machinery, or the stamp mill of said company, or any part of the same, giving names, dates, and circumstances so far as you can recollect them.

Answer. Yes; the local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased some parts of it.

Did you make any such declaration as that to General Adams in answer to his question?—A. My reply to General Adams at that time was that when it came to the mill, the taking away of the machinery, etc., I did know about it, because it was I who took away the principal part of it.

Q. What I have read is:

The local authorities of San Dimas claim that the Mexican Government owns that property, and they have sold and leased some parts of it.

What did you testify?—A. I referred him to my correspondence with Judge Cipriano Quiroz de la O.

Q. We will come to that in answer to another question.—A. That was my reply. I referred him to my correspondence with that judge.

Q. Did you know at that time, or do you know now, that the local authorities of San Dimas claim that the Mexican Government owned that property?—A. I know that there has been some trouble between the company and the authorities; I supposed they were the local authorities; and when I asked permission of the judge to take away such of the things as I wished, he sent me down a letter which here is correct.

By Mr. KENNEDY:

Q. On what page?—A. That is on page 112.

Mr. LINES. In the testimony of some witness for Mexico.

Mr. FOSTER. Page 112 of the other book that has the letters in.

The WITNESS. Shall I read it?

Mr. FOSTER. No; because we will come to that in answer to another question.

The WITNESS. I referred him to that correspondence.

The CHAIRMAN. Shall I have the letters you first introduced this morning placed on file?

Mr. KENNEDY. That has not been done; but they will be kept subject to the inspection of counsel or the committee at any time.

The CHAIRMAN. In case other members of the committee might wish to see them.

By Mr. FOSTER:

Q. I continue to read:

I know, too, that a Mexican citizen, whose name is Francisco Torres, and who is now, and has been for the past year and more, the occupant of said haciendas and mining property and machinery of said company, claims ownership of the same; and that he works the mines of claimant successfully, by "Patio" process, a part of them under a "denouncement" made of the "Rosario" mine in the name of one Granger, an Englishman; and although the denounce-

ment is said to legally cover only one of the principal mines of said company, "El Rosario," which is probably the richest and most valuable of them all, he, nevertheless, works some of the other mines of said company in "Bonanza," and claims to own them all, as he told me when I was there, but a few months ago.

Please state whether that answer is correctly given as you testified at Mazatlan?

The WITNESS. That is in reply to question 5.

Mr. FOSTER. Yes; so far as I have read. Did you testify to anything as to the denouncement of the Rosario mine by Granger?

A. I believe I did. A mine in Mexico, when it is not worked, is subject to denouncement, and I knew that people had denounced it; but I don't think that they ever did much of it, and if they did, it was only with loss to themselves.

Q. Did you testify that the Rosario was probably the richest and most valuable of all the mines?—A. No, sir; I never did.

Q. Did you know anything about the value of the Rosario mine?—A. Only from tradition, that a great deal of ore had been taken out of it.

Q. But as to its then present condition; I mean at that time?—A. I knew nothing about it, sir.

Q. Did you state that he "nevertheless works some of the other mines of said company in bonanza?"—A. No, sir; I didn't testify that any mines were ever worked in bonanza when I was there.

Q. You made no such statement to General Adams?—A. No, sir.

By the CHAIRMAN:

Q. What is meant by the phrase working a mine in bonanza?—A. The consolidated Virginia mines on the Comstock were worked in bonanza by Flood and O'Brien.

Q. What is the signification of the phrase?—A. It means that they are paying, paying handsomely.

By Mr. FOSTER:

Q. In large quantities?—A. Yes, sir.

Q. Why did you mention the Flood & O'Brien mines being worked in Bonanza as an illustration?—A. Because they were yielding very rich results. They had rich ores in abundance.

Q. I proceed to read:

I know that parts of the stamp mill and machinery of "La Abra" Company have been taken away from the company's works at Tayoltita, and that the same are now in use, and have been for two or three years past, by other mines and mining companies in distant

places, some of them as far as three days' ride from Tayoltita. I know that a Mr. Hapgood, of Buena Vista, has a part of the claimant's mining tools and machinery.

Did you make any such statement as that in regard to Mr. Hapgood?—A. I might have made it, for this reason, that everybody who wanted any pieces of machinery went there and helped themselves. There was nobody to prevent them.

Q. I continue to read:

Mr. Hapgood has in use at his works in Buena Vista a "jack-screw," a large pair of scales, and many other things taken from said claimant at Tayoltita, and sold to him, as he told me, at a mere nominal value, by unauthorized persons. I visited Buena Vista in June last, where I saw and recognized those articles in use, and was told by Mr. Hapgood that he had been using them for his mining operations there for the past two years or more, and that they came from claimant's hacienda at Tayoltita. Buena Vista is about two days' ride, and for packing machinery it is three to four days' travel from Buena Vista to Tayoltita.

Is that substantially your statement given at that mine?

The WITNESS. Where is that?

Mr. FOSTER. That is on page 402.

The WITNESS. No, sir; and I did not recognize any of the articles. Mr. Hapgood told me that he had bought of different parties, and Granger also told me that he had sold a number of things belonging to the hacienda.

Q. Did Mr. Hapgood tell you from whom he bought them?—A. No, sir; but Granger told me that he had sold different pieces of machinery to different people, and that he had to do it to support himself.

Q. I continue the reading:

I know that the "retort" belonging to that stamp mill, and without which the whole mill is completely crippled for use, was taken from the La Abra Company's works at Tayoltita, and it is now in use by a Mexican citizen named *Juan Cuevas*, who works the same in the mineral district of Huahuapa, at a place called "Huahuapa," about three days by pack mules from Tayoltita.

A. No, sir; I took the retorts myself.

Q. Did you make any such statement to General Adams?—A. No, sir; I did not. I knew there was a small district called Huahuapa; but I took the two retorts out of that hacienda myself and packed them over to San Dimas, and put them up and used them.

By the CHAIRMAN:

Q. I understand you to state that you did not make the statement as there recorded in that statement that General Foster is reading from?—A. No, sir; I did not.

By Mr. FOSTER:

Q. (Reading:)

Said Cuevas has many other valuable parts of said machinery, or the iron taken from the same, together with large numbers of claimant's mining tools, which I saw there myself, and recognized as the property of claimant, adjusted to other machinery belonging to said Cuevas and in use. This was in or about the month of December, 1871.

Does that agree with your statement as made?—A. That was toward the end of 1871; yes, sir.

Q. (Reading:)

I spoke to said Cuevas about the matter, as I had to Mr. Hapgood, and he said it was the property of claimant.

A. That is false.

Q. You made no such statement?—A. That is false.

Q. State more explicitly its false character.—A. It says here that I spoke to said Cuevas about the matter. I did not know Cuevas.

Q. You had no conversation with him?—A. None. It also reads here:

And he also told me he had bought it of some one at a mere nominal price, and considered himself, he said, very fortunate in getting hold of such machinery so cheap.

By the CHAIRMAN:

Q. You deny having said that?—A. That is false. I never was in Huahuapa; so I couldn't say it.

By Mr. FOSTER:

Q. Did you state to General Adams, in answer to his question, that you recognized any of the property belonging to La Abra Company in Cuevas's possession?—A. No, sir.

Q. (Reading:)

I know of a number of thousand dollars' worth of said machinery and tools taken from the stamp mill and hacienda of claimant and now in use in San Dimas, and in a number of mineral districts adjoining the San Dimas district, and the same scattered over a territory of a hundred and fifty miles square, more or less, a part of which has been in use three years or more, and probably much of said machinery and tools worn out or nearly so.

How far does that conform to your answers as given to General Adams?—A. That does not conform to my answers. The common report was that this machinery had been taken by whoever wished it; it was there as abandoned, and I went over with my head machinist and head carpenter and four or five of my best men, and we looked over the hacienda, and we helped ourselves to such things as we wished; and in correspondence with

the judge I said that I was responsible for them and I would pay whoever came forward and demanded payment; and I signed my name to that offer to pay whoever came forward; I didn't care whether it was the Mexican Government or the company or any individuals.

Q. I continue to read:

I also know of other parts of said machinery belonging to "La Abra Silver Mining Company," at Tayoltita, having been sold to the company of which I am superintendent and for which we are now held responsible for its appraised value by the judge of first instance in the district of San Dimas, with the privilege of using it all until called for, at an appraised value for the use of the same. After making some inquiries in reference to the real ownership I heard, by common report in the district, that no individual had a right to sell and dispose of said property of claimant, but that its ownership was really with the Mexican Government; that a suit was pending before the joint commission of the two governments, for reclamation, at Washington, and that the acts of the local authorities in compelling claimant to abandon its mining enterprise, it was claimed, had given the real ownership of said property to the Mexican Government. Last spring or summer I found out the mistake made in buying some parts of the machinery of claimant from the wrong parties; I received a note from Judge Cipriano Quiros, the highest judicial authority in the district of San Dimas, last summer or spring, asking me to call upon him at his court room in San Dimas and settle the matter referred to with him. I called as requested, and the said judge then told me that only Mexican authorities could exercise any control over the said mines, stamp mill, machinery, and other property abandoned by "La Abra Silver Mining Company," at Tayoltita, and instructed me that the said purchase made of the tools and machinery named, and then in use by my company, was all right, if I would settle the matter with him, as representative of the Government of Mexico, for the value of said property; and as I was superintendent of the Durango Company, he said he was district judge—representing the Government of Mexico in this matter, could dispose of said property to me, by lease, or by sale, as he had, he said, received recent instructions on that point from the authorities of the supreme Government. Finally our interview ended by the sale or lease of said property for use by my company—the Durango Silver Mining Company—and he, Judge Quiros, made out to me, and he signed a written authority for me to take down and use for the benefit of my said company all of the machinery left there, including the stamp mill of claimant at Tayoltita, and to put it in use at San Dimas, making me responsible to him or to the Mexican Government for the appraised value of the same, or for its return to Mexican authorities by paying the use of it, to be appraised also. I can not remember the exact language of the lease or sale, but this is the substance of it: He explained at the same time that in case said "Abra Company" should get a judgment against Mexico, as it seemed likely they would do before said joint commission at Washington, that said mines, hacienda, machinery, and stamp mill then becomes the property of Mexico, and that it was, he said, his business as district judge, to look out only for the interests of Mexico, and to secure, as nearly as possible, the value of said machinery and stamp mill for the Government. He executed the lease or paper obligation authorizing me to take from Tayoltita such parts of said mining property as my company desired,

or all that was left of said stamp mill and machinery, if I wished it all, and to remove the same to San Dimas for use by the Durango Company; and he authorized me also to keep and make use of the parts of said machinery and tools which I had bought of irresponsible or unauthorized parties, holding me responsible to him—Judge Quiros—or Mexico, for the appraised value of that also, or for the value or its use, as I might elect. I have a part of said machinery, so leased to me, in use now at San Dimas, and I intend to remove the balance of said stamp mill and all that remains of the machinery and mining tools of said "Abra Company" to San Dimas, or to such other place in that district as may be most profitable to my company, in order to work said mill and machinery under the lease or written obligation referred to by and between said district judge and myself, to have the privilege of paying to Mexico the appraised value and owning the same, or of paying Mexico for the use of said stamp mill, tools, and machinery, and of turning over to the Mexican Government the same again when said suit shall be decided by the commission at Washington. I do not remember now the exact language of said sale or lease, for I have not seen it since the day it was taken, but I have stated its substance correctly.

Now, I will ask you to state how far what I have just read conforms with the statement by you to General Adams at Mazatlan.—A. My answer was in my letter to the judge, and the judge's reply to me, and I also said that I would be responsible to whoever should turn up as owners.

By the CHAIRMAN:

Q. Have you those letters?—A. No; I have not.

Q. Did you furnish them on that occasion to General Adams, or copies of them?—A. He had them with him, or copies of them.

Q. The answer you gave was what you had embodied in those letters?—A. Yes, sir; they are the letters and the answers.

Q. Then do I understand you to say that the statement made here is not correct?—A. It is made out of whole cloth.

By Mr. FOSTER:

Q. That is, it is altogether incorrect?—A. Yes, sir; it is made out of whole cloth.

Q. Did you ever state to Adams that the ownership of this property left by La Abra Company was really with the Mexican Government?—A. No, sir; because I didn't know with whom it was left.

Q. Did you ever state to him that a suit was pending before the joint commission of the two Governments for reclamation at Washington, and that the acts of the local authorities in compelling claimant to abandon its mining enterprise, it was claimed, had given the real ownership

of said property to the Mexican Government? Did you ever make any such statement as that to Adams?—A. No, sir; I never did. I did not know anything about it. I knew that there was a controversy, and I had heard it bandied about by both sides. But I did not know who were the partisans, and therefore I did not know, and I did not care. I wanted that machinery to start my enterprise, and took it and gave documents for it.

Q. Did Judge Quiroz ever make any claim to you of ownership of that property or the control of it by the Mexican authorities as the owner of it?—A. No, sir; he did not. He claimed the right of protecting the property against being pillaged.

Q. I now read from House Executive Document No. 271, Forty-ninth Congress, first session, page 112. I propose to read your application to the judge and his answer:

CHARLES B. DAHLGREN, resident of this mining district and general administrator of the American company entitled Durango Mining Company of New York, appears before you, making faithful and legal manifestation that being in need for his machinery used in the reduction of ores, of an iron wheel belonging to the machinery of La Abra Mining Company of Tayoltita, and which has been abandoned, he is going to dispose of said wheel, as also of its attachments. On making known to you what he intends to do, it is with the object that note of it be taken by the court in your worthy charge, so as to make it public, and that the value thereof be charged to him, to which effect he makes the necessary protestations to pay what he will be made responsible for either by a cash payment or by the return of said wheel.

He requests your honor to be pleased to keep this petition in your court for his responsibility at all times, and publish it, should you think necessary to do it.

CHARLES B. DAHLGREN,
Administrator of the Durango Mining Company of New York.
SAN DIMAS, *May twenty-third, eighteen hundred and seventy-two.*

Court of the first instance of San Dimas.

May twenty-third, eighteen hundred and seventy-two.

The above petition having been presented, the undersigned judge, taking into consideration that La Abra Company referred to has filed a claim against the Mexican Republic, this court does not authorize the petitioner, Mr. Charles B. Dahlgren, to dispose of the wheel above mentioned, and if he does it it will be under his own responsibility, to which end let this order be published and posted in prominent places of this district. This order is to be made known to Mr. Dahlgren for his information. The undersigned judge so decreed, ordered, and signed before the witnesses.

CIPRIANO QUIROZ DE LA O.

Witnesses:
E. PADILLA.
NICANOR PEREZ.

On the same date the citizen, Charles B. Dahlgren, was notified of

the above order, and said that he heard it. He signed it in the presence of the witnesses.

CHARLES B. DAHLGREN.
CIPRIANO QUIROS DE LA O.

Witnesses:
E. PADILLA.
M. CORDOVA.

How does this correspondence which I have just read conform to your recollection of what occurred at that time?—A. That is correct; that is the correspondence which ensued.

Mr. KENNEDY. Can you not read on, Mr. Foster, so as to make the record complete and show that testimony was taken and that an order was made? You will find it there.

Mr. FOSTER. Yes; I will if you desire. I continue the reading:

On the thirty-first of May, eighteen hundred and seventy-seven, by judicial order of this date a legalized copy was taken of this document, as also of the testimony relating thereto.

In witness whereof:

FELIPE SALCEDO.

Witnesses:
E. PADILLA.
LORENZO RODRIGUEZ.

Q. I continue to read question 6 from the deposition already cited:

Question 6th. Did said Judge Quiros receive from you any money or other thing of value for executing said bill of sale, or paper obligation, authorizing you to take down and make use of said company's stamp mill, tools, and machinery?

Ans. Yes; I sent him a present of twenty dollars in money, and I also sent him a week's rations for himself and his employés, which he received.

State whether that conforms to the answer you gave to General Adams at Mazatlan?—A. No, sir; I never said that; I never had any business transactions with Judge Quiros; I never paid him any money; and I never sent him any rations for himself or employees; never in the five years that I was there.

Q. Was any such question as that asked you by General Adams at Mazatlan? Did he ask you that or any similar question?—A. I don't know; I don't recollect; I don't think he did, because he was very tender-footed in approaching me on the money question.

By Mr. WILSON:

Q. Who was very tender-footed?—A. Gen. A. W. Adams. I had seen some of his transactions there, and I did not sanction them, and he held aloof about asking about any of my transactions at all.

By the CHAIRMAN:

Q. Do you refer to transactions in connection with this business?—A. Yes, sir; in regard to this business.

By Mr. FOSTER:

Q. I continue the reading:

Question 7th. Will you now please present to the consul the written obligation, referred to as having been executed by Judge Quiros, selling or leasing for use said property of claimant, in order that a certified copy may be taken by the consul and filed with this deposition at Washington?

Ans. It is not possible for me to present that paper called for by the question, because I did not bring it with me, as I would have done if I had known that it would have been required; or had I anticipated this examination, of which I had no knowledge or intimation until I was notified to appear here for examination. I left that paper, with the other papers of the Durango Mining Company, of which I am superintendent, all in charge of Dr. Stoeck, in my absence, and it would be impossible for me to produce the paper, as it is in the mountains, about two hundred miles from this place, and it would require probably a month to produce it here, if, indeed, it could be done at all, as the rebels have taken Mazatlan and the entire road to the district of San Dimas, since I came down here, and from the present political excitement and uncertainty I can not say when I may find it convenient or safe to return, as my feelings and views are known to be in favor of the Government or constituted authorities.

Please state how far that answer, as read, conforms to any statement you made on that subject at Mazatlan.—A. That name, Dr. Stoeck, should be spelled Storch. I do not recollect as to the rest of the answer, except the last part of it. It says:

I can not say when I may find it convenient or safe to return, as my feelings and views are known to be in favor of the Government or constituted authorities.

I returned that same day. That story is absolutely manufactured, for I returned that same day.

By Mr. WILSON:

Q. Returned where?—A. Up into the mountains of San Dimas from Mazatlan.

By Mr. FOSTER:

Q. Do you remember of his saying anything in regard to a paper of that character?—A. Yes, sir; I do.

Q. I will finish the answer:

I was fifteen days coming from San Dimas to Mazatlan, including delays and hindrances occasioned by political disturbances.

How far does that conform to your recollection of what you said?—A. (Referring to memorandum book.) I started on Monday, August 19, 1872, and I reached Mazat-

lan on Tuesday, September 3, 1872. That was on the fifteenth day I got in.

Q. I continue the reading:

Question 8th. Did the attorney of "La Abra Company," or other person, request you to come to Mazatlan and give this deposition, or was the giving of your testimony in this case suggested to your mind, or thought of by you, before you arrived in Mazatlan?

Ans. This question is answered by my reply to one of the foregoing questions. I think I have said that I knew nothing of the purpose of the attorney for "La Abra Company" to have me examined until notified in writing by the consul to appear and be examined in the case; nor had I the remotest idea of it. I came here with my sick wife and family, to get them on board the steamer for New York, and also to purchase supplies for the Durango Company.

A. That is correct, except that Adams himself asked me if I would testify.

By Mr. LINES:

Q. You got no notice in writing from the consul?—A. I don't recollect of any.

Q. You do not recollect getting a subpœna?—A. No; but in general effect that is correct. When I came down to Mazatlan I did not know that I was going to remain. I did not know that Adams was there, and it was not until I met him and he asked me if I would testify that I consented to remain for that purpose.

By Mr. FOSTER:

Q. You have no recollection of receiving any written notice or subpœna from the consul?—A. No, sir; I was in the consul's office every day, and in conversation it may have turned up, but I don't recollect of any formal papers being served upon me.

Q. I continue the reading:

Question 9th. What is the character of the mines owned and worked by said "Abra Company" at Tayoltita, which you have named, so far as regards their richness of metal and supply of the same?

Ans. It is good. They are undoubtedly among the best and most valuable of all the silver mines in Mexico, and some of them are not unknown to fame for their rich and abundant productions. I refer more particularly to "La Abra," "El Rosario," "La Talpa," and "El Cristo" veins. I should like to own them, and if it were possible to raise capital to work them, and to secure proper protection from the local authorities, which I think improbable, if not impossible, in Tayoltita, to secure any protection.

Please state how far the answer which I have read conforms to the statement made by you to General Adams at Mazatlan.—A. I can only say in reply to that that that is false in every particular. I could have owned them if I wanted to, and I had the means to work them. I had all

the protection that I wanted from the local authorities; and, as a proof of it, I worked those mines for five years, and they are being worked now, and that Durango Mining Company has been worked twenty-seven years, and they are now turning out $115,000 a month. I worked the Candalaria and the Bolanos in San Dimas. Some people repeatedly asked me to go over there and take hold of those mines, but I always declined.

Q. Why did you decline?—A. Because I sent over my right-hand man to look over the district, and if there was anything good to secure it.

Q. What report did he give you?

Mr. KENNEDY. I do not think that that is admissible at all.

The CHAIRMAN. No.

Mr. KENNEDY. That is pure hearsay.

The WITNESS. My rule always is to send out my right-hand man to look at a property first; and then, if he reports favorably on it, I go myself and look at it, and if it is good I take it.

Q. Did you ever go and examine the Tayoltita mines upon that report?—A. No, sir.

Q. Did you state to General Adams at that time that the mines now worked by La Abra Company are among the best and most valuable of all the silver mines of Mexico?—A. No, sir.

Q. Or anything of that purport?—A. No, sir. When we consider Zacatecas and Candalaria that would be the height of folly for me to make such a statement, for my book on Mexico, which is a recognized authority on the mines of Mexico, will bear me out in what I say, because all those notes were made at the time I was in Mexico.

Q. I continue the reading at question 10:

Question 10th. Did you, when at Tayoltita, observe the piles of silver ores on the patios of the company, so as to be able to state the quantity and value of the same? If so, state it.

Ans. I think not; I did, however, more than once, observe said ores. The company left great piles of them on the "patios," which they had taken out and packed down from their said mines, and the average of them were said to be very rich of silver metal, with a small percentage of gold; but I also observed there unmistakable evidences of that which had been a common report for a long time, that those piles of ore had been torn down and the richest of their metals culled out and carried away, leaving upon those extensive "patios" the poorest of them, which were scattered over a large surface, covering, I should say, at least a quarter of an acre of ground. It was said that the company abandoned about a thousand tons of those metals, but not half of them remained when I saw them in 1870; and those that were left gave evidences of having been torn down, culled out, and rejected. I can not state the value of those that I saw, but I think from a cursory examination

of them that even the poorest and rejected pieces would pay well to beneficiate.

How far does this answer conform to the statement made by you to General Adams at Mazatlan?—A. I told him that I had observed the piles of ore on the patio, spread over the whole patio. I also told him that I sent my assayer over there to sample it, and he did so, and brought the sample back to the hacienda.

By Mr. KENNEDY:

Q. What date was that that you sent him over?—A. When I was tearing down this machinery in December, 1871, I sampled them myself.

By Mr. FOSTER:

Q. About December, 1871?—A. About December, 1871.

Q. Go on with your statement.—A. That was a frequent occurrence, because we were some time in tearing it down, and I was over there frequently, and, being a mining man, I would naturally go over and take samples from the piles of ore, which I did, and sampled them thoroughly, and if they had been any account I would have worked them up.

Q. Did you make any statement to him at that time to the effect that the average of that ore was said to be very rich in silver metal, with a small percentage of gold?—A. No, sir.

Q. Did you make a statement to the effect that there were "unmistakable evidences of that which had been a common report for a long time, that those piles of ores had been torn down and the richest of their metals culled out and carried away?"—A. No, sir.

Q. You were stating that your man made selections from those ores on the patio?—A. Yes, sir.

Q. State the result of your assay.—A. My assay was $8 in silver and $5.50 in gold, making $13.50 per ton.

Q. Would you call that very rich in silver and gold?—A. It wouldn't pay for working.

Q. Did you say anything to him about the common report that the ores had been torn down and the richest carried away?—A. No, I don't recollect that I did; but you can depend upon one thing, that Mexicans would never leave any rich ores lying around, nor American miners either, any more than the Treasury Department here would leave silver dollars lying around.

Q. Did you say:

I can not state the value of those that I saw, but I think from a cursory examination of them that even the poorest and rejected pieces would pay well to beneficiate.

Did you make any such statement as that?—A. No, sir; I did not.

Q. What was the fact in regard to that, from your observation in 1871?—A. That our test was too low a grade to touch.

Q. You mean to work?—A. Yes, sir; to handle. When I say handle, that means taking them off the place and working them.

Q. State whether the ores that you saw in 1871 at the patio were of any value for practical purposes.—A. No, sir; $13.50 would hardly pay the freight over to San Dimas.

By the CHAIRMAN:

Q. You mean in Mexico?—A. Yes, sir.

Q. Would it pay in this country?—A. In this country we are working 70 tons a day that don't work over $15 to the ton. But to take that over to San Dimas, over 12 miles, that ore would hardly pay freight.

By Mr. LINES:

Q. What would have been the cost of reducing it at the patio there, provided the machinery was all in operation and without carrying it over to San Dimas?

The WITNESS. Leaving out the mining part?

Mr. LINES. Leaving out the mining.

A. I don't know what the expense would be.

By Mr. FOSTER:

Q. What would it have cost to reduce the ores on the patio there at Tayoltita?—A. They had rather poor chance there, on account of the likelihood of it being carried away by flood. But even under favorable circumstances, with the loss in quicksilver and one thing and another, I don't see that they could have reduced it for less than $8 a ton; and that would not include the shipping of the bullion to Mazatlan, nor include the mining or the packing down to the hacienda.

By Mr. LINES:

Q. Would there not have been, including all those expenses, an absolute loss on each ton of ore mined and reduced?—A. I worked a low grade of ore in Candalaria for a year for a test; I worked from 900 to 1,000 tons of ore, and I gave it a good test, bringing everything down to a business basis, and I lost a couple of thousand dollars a year on $18 and $19 rock. Then I abandoned it and went to other parts of the mine.

By Mr. FOSTER:

Q. I continue the reading.

Question 11th. What, in your judgment, was the value of the mines, machinery, stamp-mill and other improvements belonging to and worked by "La Abra" Company, which you have named? State your opinion of their value in March, 1868, and at the present time, and also the amount of money which that company must have expended in said works, in your opinion.

Ans. I should value those mines at not less than one million dollars, in 1868, and the company's improvements at half a million more.

Did you make any such statement as that, as far as I have read?—A. That I should value those mines at $1,000,000 in 1868? I was not there in 1868. I knew nothing about that in 1868, and I never made any such statement as that.

Q. What do you say to that which follows: "And the company's improvements at half a million more?" Do your remarks apply to that as well?—A. They might have spent $100,000 or $150,000, all told, in the whole business; that would be my judgment; they might have raised more money, but I don't think that in the whole business it would amount to more than that.

By the CHAIRMAN:

Q. Do you mean the machinery?—A. In the machinery, bringing it up, and everything.

By Mr. FOSTER:

Q. What do you mean by "everything;" all the operations of the company?—A. The operations of the mine I don't know anything about, but I mean all the buildings and everything. That mill may have cost $40,000 landed there; I couldn't state; if it did cost more than that it was an outrageous waste. But I say this, that I knew nothing about that in 1868, and I never made any such statement about things I do not know.

Q. The opinion which you now express is simply upon what you saw at the time and heard from others?

Mr. KENNEDY. I object to that.

A. No, sir; my knowledge of the business was from my confidential man, Dr. Storch, who was a mining man, and I sent him over to examine these ores.

Q. I am now speaking about the value of the mines and improvements.—A. Of course, if that was the character of the ore which came out of those mines, which it was, I certainly would not take hold of a mine that would not give more than $13 ore, and I declined to take hold of it.

Mr. WILSON. Please do not argue the case as we go along; let us have the testimony.

Mr. FOSTER. I am getting an answer to this question; I continue to read:

And if they could have been held and worked by their magnificent machinery and stamp mill, without interruption, or "prestamos," and with anything like an assurance or hope of protection, I would now value them at three or four times that amount.

Q. Did you make any such statement as that to Gen. A. W. Adams?—A. No, sir; I never knew that they had prestamos.

By the CHAIRMAN:

Q. What is a prestamos?—A. A forced loan.

By Mr. FOSTER:

Q. Did you make any reference to any interruptions which the company had?

Mr. KENNEDY. I want to call the attention of the chairman to the fact that this answer is hypothetical:

If they could have been held and worked by their magnificent machinery and stamp mill, etc.

There is no statement in this answer that the witness knew or did not know at the time he made it that there had been prestamos.

Mr. WILSON. He says he did not give any such answer.

Q. I continue the reading:

If the parts of the stamp mill could be found and put together again upon their grounds at Tayoltita, and all the machinery there in as good order as when the same was abandoned by the company, I should value the whole at four to five million dollars, not less than four million ($4,000,000).

What have you to say to that part of the answer as having been given by you at Mazatlan?—A. As a mining man I would not make such a statement.

Q. Did you make such an assertion?—A. No, sir; I never made such a statement before or since, and I do not believe that I would make such a statement to put the value of a mine at $4,000,000 when I had not seen it.

By Mr. WILSON:

Q. I would like to have you state whether you did or did not make that statement. I do not want any hypothetical answers or any equivocal answers to that question.—A. No; I never said that a mine was worth $4,000,000 when I did not know it.

Q. Did you ever make that statement?—A. No, sir; I never made any statement of that kind.

Mr. WILSON. That is what I want you to say.

Mr. FOSTER. Mr. Wilson, you will have abundant oppor-

tunity to cross-examine. That is what he has said two or three times already.

Mr. WILSON. I simply wanted an answer to the question.

Mr. FOSTER. Well, you have got it. Now, I continue the reading:

But I do not believe it possible ever to get that machinery together again, as the parts stolen and sold are so scattered over several mining districts in the State, and much of it partially worn out, or refitted to other machinery, so that it would, in my opinion, be better and cheaper to repurchase a new stamp mill and machinery and bring it there from the United States, than go to the uncertain expense of hunting up or replacing that which was taken away from them at Tayoltita.

A. If I said that then, I say it now.

By Mr. WILSON:

Q. Did you say it then?—A. I might have said it, and that is the truth, that it would be better to put up a new mill than to hunt up old pieces—for instance, a retort. We took two of the retorts that were broken and could not be used over again, and we couldn't do anything else than bring new ones from the United States. If I did say it, I say it now.

By Mr. FOSTER:

Q. The question now is whether you said:

I should value the ores taken out of said mines, and abandoned by that company, in 1868, at half a million dollars, judging from what I have seen there myself, and have heard stated by reliable miners in that district, and also by common report, or public opinion, which is seldom in error among practical miners in such cases.

What have you to say as to the correctness of that declaration?—A. It says here that "I should value the ores taken out of said mines and abandoned by that company in 1868 at half a million dollars." Did you make any such declarations as that at Mazatlan?—A. No, sir; not from what I have seen there myself; and then there is my own statement, made before this examination took place, of that assay (13.50) of the ores that were taken out.

Mr. WILSON. In order to avoid any future controversy about this matter, I would like to have the witness state whether he said that thing in that connection or not.

The WITNESS. As I told you, my answer to General Adams has been perverted, and there is only one thing to do, and that is to bring the original notes that I erased and corrected; bring those sheets of paper; they will show what I said at that time.

Mr. WILSON. I simply want to know whether you said that or not.

Mr. FOSTER. He has answered that he did not.

Mr. WILSON. He has answered it in an equivocal way.

The WITNESS. What I have said or did not say has been changed and perverted.

By Mr. WILSON:

Q. If you did not say that, then it has been changed?—A. Yes; it has been changed.

Q. Now, I want to know whether you did or did not say that?

The WITNESS. Did not say what? I have answered.

Q. Just what he read to you. You can conform your answer just to what Mr. Foster has read to you, and you have it right before you, reading it for yourself.—A. Yes, sir.

Q. I want to know whether or not you said this:

I should value the ores taken out of said mines, and abandoned by that company, in 1868, at half a million dollars, judging from what I have seen there myself, and have heard stated by reliable miners in that district, and also by common report.

A. The common report I have got nothing to say about.

Mr. WILSON. I want to know whether you said that?

Mr. FOSTER. Did you make any such declaration as that to General Adams at Mazatlan?

Mr. WILSON. I want to get at what he said.

Mr. FOSTER. I object to the interruption. If the answers are not satisfactory, you will have an opportunity to cross-examine hereafter.

The WITNESS. My answers have been perverted so that it is hard to say. It says here that I said, "I should value the ores at half a million dollars." I simply say to that that if I should value these mines at not less than $1,000,000, I put them in the same category, when it comes to judging of the value of mines in dollars and cents.

Mr. FOSTER. Did you make any such declaration as that?

Mr. WILSON. One moment. They say that this testimony has been perverted, and he is trying to create that impression here. Now, we have a right to know, when they are putting these categorical questions to him, whether he said that thing or not, and if he did not say that, then let him state what he did say. I do not want this witness to come here and give equivocal answers, about which we may argue hereafter before the committee. I want to know whether he said that or not. Then, if he says he did not say it, let him state what he did say, and we can cross-examine him upon that.

Mr. FOSTER. I am conducting this examination now

I have asked the witness a question, and I do protest against counsel on the other side interrupting either my questions or the answers of the witness in the manner in which Judge Wilson persists in doing. I say that if he does not understand the answers given by the witness he will of course have the privilege of interrupting and asking for a more distinct answer, but in the cross-examination hereafter the judge will have a full opportunity to ascertain all that he desires in regard to the knowledge of this witness.

Mr. WILSON. That is what I am doing.

Mr. FOSTER. The time has not come for your cross-examination, and we do not propose that the counsel shall begin now to intimidate and worry and annoy the witness.

The WITNESS. He does not annoy me a bit.

Mr. FOSTER. Or interpose at this time. If he chooses to do so when conducting his cross-examination, it is his privilege, but not now.

Mr. WILSON. I simply want to understand what the witness's answer is.

The CHAIRMAN. The regular practice in court would be that General Foster would ask his question in a form that suited himself, provided he asked legal questions, and the answers would be taken from the witness. Thereupon the other side would have the right to cross-examine upon those answers and upon any matter connected with them. But I do not believe that Judge Wilson has the right to take the witness out of Mr. Foster's hands and to shape the answer——

Mr. WILSON. No; I do not.

The CHAIRMAN. Unless the answer is going upon the record in some incorrect form.

Mr. WILSON. I only want to know what the answer is.

Mr. FOSTER. You may ask the stenographer to read it.

Mr. LINES. Suppose you could not understand it at all; would you object to it?

Mr. WILSON. Yes. If he put the question in such an unintelligible way that a man of ordinary understanding could not understand it, I would object to it.

The WITNESS. There is a question here and an answer; and all these answers as to whether a portion of the ores were worth a half a million dollars or whether the whole mine was worth $1,000,000 or whether it would have been worth $4,000,000—I put those three distinct lines of answer into one and say that I never gave any testimony as to the value of either a portion of those mines or as to the

value of the whole mine to General Adams, and I did not even give him my answer in that way.

The CHAIRMAN. That seems to cover it. He gave no testimony about it.

Mr. WILSON. That was what I was trying to get at. That is all right.

The CHAIRMAN. Pass on with the examination.

By Mr. FOSTER:

Q. I continue the reading:

The refuse ores which have been culled over and rejected, and which still remain upon the ground, are worth but little. They might beneficiate as high as a hundred thousand dollars, but I think not to exceed that amount.

Did you make any such declaration as that to General Adams?—A. I did state that the refuse ores were worth but little.

Q. Did you put such an estimate on their value as $100,000?—A. I put that in same category of the values of either a portion or the whole. But I stated that the refuse ores were worth but little.

Q. Did you make any such statement as that?—A. No, sir; but I said the refuse ores were worth but iittle.

Q. (Reading.)

I believe four-fifths of the ores of value have been stolen from the company's patios and sold in other places.

Did you make any such statement as that?—A. That is as false as it is possible to put it. I never said that.

Q. (Reading.)

This, too, I only know from common report, which I believe to be true, but from all the circumstances made known to me by Mexican miners at Tayoltita.

Did you make any such statement as that to General Adams as that "I believe it to be true?"—A. No; I did not.

Q. Now I come to question 12:

Question 12th. Do you know whether *Marcos Mora*, *Macario Olivera*, or other Mexican authorities of San Dimas, in 1866, 1867, and 1868, were enemies to "La Abra" Silver Mining Company, or whether any of said authorities encouraged Mexican miners to commit depredations upon said company or their property at Tayoltita, or whether said authorities, or any of them, incited disturbances or encouraged the expulsion of said company from their mines and from the country in the years named?

Ans. I do not know of my own knowledge, but I have heard that all those things were done there by the authorities named. I have heard it stated there that Macario Olivera, prefect in 1868, and Marcos Mora, whom he succeeded, were enemies of "La Abra" Company, and that they and some other authorities in the district

acted badly, and favored the expulsion of La Abra Company; but of this I have no personal knowledge.

Did you make any such statement as that to General Adams at Mazatlan?—A. No, sir; I did not. I did not know Marcos Mora or Macario Olivera, or about any of their disturbance, and I made no such answer to General Adams. I had heard of troubles with the local authorities, but I did not know who was in the right or who was in the wrong.

By Mr. WILSON:

Q. And you did not say anything about any report to General Adams either, did you?—A. Of the common report that there was trouble between Exall and the local authorities, due to his own indiscretion——

Q. I am not asking that.—A. You asked me what I heard.

Q. No; I did not ask you that.—A. I had no personal knowledge.

Mr. FOSTER. We object to Mr. Wilson interposing in this way.

Mr. WILSON. Go on.

By Mr. FOSTER:

Q. (Reading:)

Question 13th. How many foreign companies were there doing business in mining in San Dimas district in 1866 and 1867, and how many are now left in the district of San Dimas? Is there any at all except the Durango Company, which you represent as superintendent?

Ans. There were a large number of American mining companies in that district in the years named, but only the Durango Company now remains.

What do you say as to that?—A. I did not reply at all except that the Durango Mining Company was in existence and at work. I understood you wanted me to say whether I gave that testimony or not, and if I did not give it, what I did say. That is what I understand.

Mr. WILSON. No; he asks you in that connection for an answer, and I would like to have you say whether you did or did not say it.

The WITNESS. I say no, with the exception of the latter clause, which mentions the Durango Mining Company.

Q. (By Mr. FOSTER.) (Reading:)

Question 14th. How is it that your company can remain there without disturbances?

Ans. We have had disturbances and difficulties, but we have found it necessary to submit to all exactions, whether lawful or unlawful, which makes it to the interest of the authorities to keep us there; we have found out how to manage and *interest them*,

otherwise I suppose my company would be compelled to leave like the others, without a doubt.

Did you make any such answer as that to General Adams in your examination at Mazatlan?—A. No, sir; I did not. What I did say I suppose I can state now.

Mr. FOSTER. Yes; you can state as well as you can what you did say.

A. I stated that if I had been disposed to create a quarrel I could have had all the fight I wanted with the authorities, but that I was not there for that purpose.

Q. Did you make any statement to the effect that you found it necessary to submit to the exactions, whether lawful or unlawful?—A. No, sir; I submitted to no exactions and had none.

Q. (Reading:)

Question 15th. Do you know Matias Avalos, of said district?

Ans. Yes; I know him very well; he is, and has been for the last four years, in the employ of the Durango Company, of which I am superintendent; he is now with me in Mazatlan, as muleteer and mozo.

A. That is correct.

Q. As stated at Mazatlan?—A. Yes, sir; he accompanied me.

Q. (Reading:)

Question 16th. What is the character of the said Matias Avalos for truth and veracity in San Dimas, or where he is best known?

Ans. It is good. I look upon Matias Avalos as a strictly honest, truthful, and trustworthy man. I have frequently entrusted him with large amounts of silver coin, which he has always brought safely to the company from Mazatlan, and also with bullion from San Dimas to the mint at Durango, and Culiacan, and he never, as many others have done, reported a loss, which he might have done without detection or suspicion; but his reports are always candid and truthful. He is regarded as a strictly honest, conscientious, and reliable man.

How far does that conform to what you said at Mazatlan to General Adams?—A. That is perfectly correct, except that I added that on one occasion he had lost a $20 piece, which slipped out of his belt. I recollect that perfectly. I said: "General Adams, he never lost but one piece of money for me, and that was an ounce" ($16); and on examination of what they call in Spanish the "rattlesnake" (a belt that they wear around the waist), we found where it had worn through, and he offered to replace it, which I declined. But that answer is perfectly correct with that exception.

Q. (Reading:)

Question 17th. Have you heard anything about witnesses having been suborned by Mexican authorities of San Dimas, to testify for

the defense against their will, and in contravention of what said witnesses had previously testified to on the part of the claimant in this matter, by threats of inflicting a fine of one hundred (100) dollars and imprisonment if they did not come to court and testify against claimant? If you know of any such case, state the names of such authorities and of the witnesses so threatened and suborned; and, if you know, what was the result of the same?

Ans. I have heard of such threats being made by Judge Milan and by the said Judge Quiros, who succeeded him in office as chief magistrate of the district of San Dimas.

Did you make any such declaration as that to General Adams in answer to his question?—A. Yes, sir. I heard General Adams make that remark. I have heard statements of such threats being made, and Adams is the one that made them.

By Mr. LINES:

Q. From him you heard it?—A. From him I heard it.

Mr. WILSON. Ask him whether or not he made that statement in that deposition.

Mr. FOSTER. He says yes.

The WITNESS. I heard it.

Mr. FOSTER. And he then proceeds to say——

By the CHAIRMAN:

Q. You answer that you did make that statement?—A. I did make that statement. I have heard of such threats being made.

By Mr. FOSTER:

Q. Then you state that they were made to you by General Adams?

Mr. WILSON. He states that he made the statement, and now he adds that the statements he heard were made by Adams.

The WITNESS. Yes, sir.

By Mr. FOSTER:

Q. (Reading.)

These threats were made against Matias Avalos and James Granger, both of whom, it was said, had previously testified on behalf of the claim of "La Abra" Company; and I heard Matias Avalos say that said district judge wrote down a statement for him to sign, on behalf of defendant, which was against his will and not true in point of fact; that said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he (the judge) said there was "too much noise in the court room." I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

State whether that in whole or in part conforms to any statement made by you to Adams at Mazatlan.

Mr. WILSON. The question is, Did he make that statement?—A. No; I did not make that statement as it is there.

Mr. FOSTER. I am propounding the question.

The WITNESS. No; I did not make that statement as it is there.

Q. State in what respect it differs from the statement that you did make, according to your recollection.

The CHAIRMAN. Gentlemen, we will have to suspend here now, as I understand the Senate is in executive session, and I will have to go up to the Senate Chamber. If it will suit [illegible] will meet again at 10 o'clock to-morrow morning (Saturday), and we will try to sit it out.

Mr. KENNEDY. Before we adjourn I should like to request that the committee call on the Secretary of State to produce the original of this deposition.

The CHAIRMAN. I have already done that.

Thereupon the subcommittee adjourned to meet at 10 o'clock to-morrow, February 2, 1889.

SENATE OF THE UNITED STATES,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D. C., February 2, 1889.

The committee met pursuant to call.

Present: Senator Morgan (chairman), Hon. John W. Foster, and Mr. Robert B. Lines, of counsel for the Mexican Government, and Crammond Kennedy, of counsel for La Abra Silver Mining Company.

TESTIMONY OF CHARLES B. DAHLGREN—Continued.

By Mr. FOSTER:

Q. Page 405, I continue to read from the deposition of Charles B. Dahlgren, on behalf of claimant, as cited in the examination of yesterday.

Mr. KENNEDY. What answer is that, Mr. Foster?

Mr. FOSTER. It is question 17. I continue to read from the answer:

These threats were made against Matias Avalos and James Granger, both of whom, it was said, had previously testified on behalf of the claim of "La Abra" Company; and I heard Matias Avalos say that said district judge wrote down a statement for him to sign on behalf of defendant, which was against his will and not true in point of

fact; that said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he, the judge, said there was "too much noise in the court room." I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

I ask you, Captain Dahlgren, to state how far this answer, as I have read it, conforms to the statement made by you to General Adams at Mazatlan?—A. Will the preceding paragraph be a part of it?

Q. Well, you have already testified to that part; you can include it if you choose.—A. It reads: "Answer. I have heard of such threats being made by Judge Milan." My reply to that was, and which includes the first part of the next sentence, I have heard of such threats being made from A. W. Adams as against his witnesses, but not mentioning any names.

Q. What have you to say in regard to this statement which I have read?—A. That takes the first part of it. The second comes to Avalos. Avalos, who was my confidential *mozo* or servant, told me that he had been drawn into this thing, or words to that effect, and had made a deposition, and asked me if any trouble would come of it. I asked him if he had told the truth. He said "Yes." I said: "Then no trouble will come of it."

Q. Did you say anything to Adams to this effect:

I heard Martin Avalos say that said district judge wrote down a statement for him to sign, on behalf of the defendant, which was against his will, and not true in point of fact?

A. No, sir.

Q. You made no such statement?—A. No, sir.

Q. Did you make any statement of this character:

That said judge wanted Avalos to retract what he had sworn to in favor of said Abra Company in 1870, and Avalos complained that the judge did not finish reading the paper that he wished him to sign, as he, the judge, said there was "too much noise in the court room?"

A. I never heard any such statement and never made any such statement.

Q. To Adams?—A. To Adams. I never heard anything about "noise in the court-room."

Q. (Reading:)

I heard Avalos say that he believed said paper was sent to Washington, with his name and mark attached to it, as his testimony in favor of Mexico, to which he never consented, as he knew that a portion of that part which had been read to him was not true.

Did you make any such statement as that to Adams?—A. No, sir.

Q. Did you ever hear Avalos make any such statement?—A. I answered that sometime ago by saying that he told me that he had made a statement and wanted to know if any trouble would come of it. I did not know which side he was for.

Q. Well, that statement that you then made covers—— —A. Covers all this thing.

Q. All that Avalos said to you at any time?—A. Yes.

Q. I continue to read from the answer:

I have heard of other and similar cases in this matter, but I have no personal knowledge of the facts. I believe the statement of Matias Avalos, however, to be true, for reasons stated in my answer to one of the foregoing questions (No.—).

A. "I have heard of other and similar cases in this matter, but I have no personal knowledge of the facts."

Q. Well, you have heard of them from whom?—A. Of course I heard of the case, talked *pro* and *con* in my hacienda. We would sit there of an evening and talk of it.

Q. Well, this relates to threats of the Mexican authorities?—A. Oh, the whole business from beginning to end; but it was not my business; I paid no attention to it.

Q. I continue to read from the answer:

I heard the said Granger say that if he had not complied with the demand of the judge of first instance of San Dimas in testifying against "La Abra Company," the claimant, that he knew he would have been compelled to give up his mining interests in that district and leave the country; which he said he could not afford to do, and therefore he was compelled to sign the testimony.

Q. Do you remember making any such declaration as that to Adams at Mazatlan?—A. No, sir; I never heard of it.

Q. Did you make any such statement as that to Adams at Mazatlan?—A. No, sir.

Q. You state that you never heard of any such?—A. I heard Granger tell all about it, but he never said he would be driven off out of the country; just the reverse.

Q. (Reading:)

Question 18th. Have you any interest, direct, contingent, or otherwise, in the claim of said "La Abra Silver Mining Company," to support which your testimony is here given, or are you agent or attorney for said company, or for any person having such interest?

Ans. No, none whatever; nor am I agent nor attorney for claimant, nor for any other party in interest.

A. That is right.

Q. That is correct?—A. That is correct; it is absolutely correct.

Q. (Reading:)

Question 19th. Was your authority to take from Tayoltita the said stamp mill, machinery, and other property of claimant, and to make use of the same in other parts of the State, given verbally, or only in writing; and was said property turned over to you with a view to your protecting the same as consul of the United States, for the benefit of claimant, or was said authority given to you only as superintendent of the Durango Mining Company, with the privilege of paying the appraised value, and of owning the same, or to pay for its use to said authorities, or to Mexico, as a business transaction between said authorities and your company?

Ans. The latter is the fact. It was a purely business transaction between Judge Quiros, representing the Republic of Mexico, and myself, as superintendent, representing the Durango Mining Company. There was nothing said by Judge Quiros, to my recollection, about protecting said machinery, stamp mill and other movable property of claimant. The transaction was not with me as consul; but, as I have stated, the property was leased for use to the Durango Mining Company, and for a valuable consideration, with the privilege of paying for the same at an appraised value by disinterested parties.

You will please state how far this answer conforms to the answer, if any, given by you to Adams at Mazatlan.—A. My answer to that is——

Q. Or was?—A. Was the correspondence between Judge Quiros and myself.

Q. Which has been read and testified to as correct?—A. Yes; that covers the whole question.

Mr. KENNEDY. Let me ask the witness if he put that correspondence in as part of that testimony?

Mr. FOSTER. Well, you can ask of me.

Mr. KENNEDY. It is just to save time.

Mr. FOSTER. I know, but you had better direct your question to me.

Mr. KENNEDY. I was directing my question to the chairman. If you have any objection, I will withdraw it. You can go on, Mr. Foster.

The CHAIRMAN. I thought your question was addressed to the witness.

Mr. KENNEDY. No; it was put through you, of course.

Mr. FOSTER. The letter was put in—introduced before the commission on the part of Mexico.

Q. The last part of that question is—I direct your attention to it—

Was your authority to take from Tayoltita the said stamp mill, etc.—

You state that, going to the latter part of the question—

or to pay for its use to said authorities?

Now I will go back—

And of owning the same, or to pay for its use to the said authori-

ties, or to Mexico, as a business transaction between said authorities and your company?

And the answer is that—

The latter is the fact.

Did you state to General Adams, in substance, that you are to pay the Mexican authorities for that machinery and other articles that you took of La Abra Company?—A. No, sir; I have stated most distinctly as a business matter in money matters I try to make no mistake; that I had asked permission to take it; that it had been refused to me by Judge Quiros, and that then I took it on my own responsibility as superintendent of that company, and announced my intention of paying whoever came forward to claim it as the proper owner.

Q. I continue the answer—

This authority was given to me by Judge Quiros verbally, as well as in writing, and I have acted upon it in good faith, believing then, as I still feel justified in believing, that he must have had authority from the Supreme Government to act in the premises, or otherwise it is reasonable to suppose that he never would have taken such a step in the matter as that of selling or leasing out this property, under the circumstances, to be worn out by use.

Did you make any statement of that character to General Adams at Mazatlan?—A. No, sir.

Q. Here follows——

By the CHAIRMAN:

Q. Do you mean, Captain, that you did not make any statement to him on that subject?—A. I did not make that statement to A. W. Adams.

Q. The statement as he put it in the deposition was not the statement you made to him?—A. I did not make that statement to A. W. Adams.

Mr. KENNEDY. Of course, Mr. Chairman, we do not admit that Adams made any statement.

The CHAIRMAN. I know, but I put it on the basis that somebody did.

By Mr. FOSTER:

Q. I find the following added in brackets in the deposition as printed on page 406:

["Interlined in the original:" Page 2, lines 16 to 17, the words "a son:" page 2, lines 29 to 30, the word "an;" page 6, lines 17 to 18, the word "the:" page 7, lines 5 to 6, the words "the stamp:" page 7, lines 27 to 28, the word "said:" page 9, lines 32 to 33, the word "them:" page 11, lines 22 to 23, the word "be."

[Erased: Page 1, third line from bottom, "bef:" page 4, line 42, "Buena Vista;" page 15, line 12, the word "said."

["The above corrections were noted before signing, with the consent of deponent and in the presence of the subscribing witnesses."]

The WITNESS. Who are the witnesses?

Mr. FOSTER. That will appear in a moment.

Q. Now, Captain, you have already stated that when you gave your statement or deposition at Mazatlan, which was written down, you gave your answers to questions propounded by General Adams which were written down by his clerk; after that was concluded you demanded to see the matter that had been written, and thereupon you made numerous changes and interlineations in that writing or paper?—A. I did.

Q. Will you state whether the changes and interlineations which have just been read embrace all the changes or interlineations that were made by or in your presence at that time?—A. No, sir; nor the twentieth part of them. Line after line I cut out—drew my pen through. I not only drew it through that way but I drew it across the entire page right that way [indicating], with a big dash. I said, "I did not authorize you, sir, to make such a memoranda as that." And I further said to him, "This appears to me something similar to the investigation in San Dimas," where I had to protect Granger against him.

APPENDIX D.

EXTRACT FROM THE DEPOSITION OF ISAAC SISSON, TAKEN BY SENATE FOREIGN RELATIONS COMMITTEE. (Sen. Rep. No. 2705, Fiftieth Cong., 2d Sess., pp. 788, etc.)

Q. How does it happen that you do not know what those rough notes [of Dahlgren's deposition] contained if this examination was conducted before you as consul or presiding magistrate on that occasion?—A. The examination was not conducted before me. I had no more—that was not my business. My business was there after they got through and the deposition was ready; then it was my business to look over it, but not to help them to fix it up.

Q. That is your idea of your business?—A. That is as I understood it.

Q. Yes, as you understood it. Now, then, was Dahlgren sworn before he was examined?—A. Sworn before the affidavit was read to him?

Q. Was he sworn before he was examined before Peña and Adams there?—A. Yes, sir.

Q. Before these rough notes were made was he sworn?—A. No, sir.

Q. Then he was not sworn before he was examined; he was sworn after he was examined and not before?—A. Before he was examined by them.

Q. What do you mean by "examined by them;" did they examine him, or did you?—A. They got together and got this by themselves. They got together and made up this deposition.

Q. Which one are you speaking of now?—A. The rough one. Then it was taken from that, and then when they got through, and got it all right to satisfy themselves, Mr. Peña copied it as it should be copied to make a decent, respectable deposition of it.

Q. How do you know he copied it?—A. I saw him.

Q. How do you know he copied it correctly?—A. I do not know as he did.

Q. Did you ever read these rough notes over?—A. No, sir.

Q. You do not know, then, whether he correctly copied it or not?—A. No, sir.

Q. Well, your interference in the matter, or your official action in the matter, rather, began after the deposition had been put in shape, copied out by Peña, read by Peña to Dahlgren, and Dahlgren subscribed it?—A. Yes.

Q. That was the first knowledge that you had of the real contents of that deposition?—A. Yes.

Q. Now, did you have any knowledge of what the real contents were except from hearing read so much as you did hear read of this copy that was made out by Peña for Dahlgren's signature?—A. I heard that.

Q. That was all the knowledge you had of what the man had sworn to?—A. That was what my knowledge was, from hearing that deposition, the one that is filed in the Department.

Q. That is the only knowledge you had of his examination on that occasion?—A. Yes.

Q. Was anybody there to cross-examine him in any way?—A. No.

Q. Mexico had no representative there?—A. No, sir.

Q. Who was this general you spoke of, or governor?—A. Governor Galan.

Q. Yes.—A. He was a lawyer.

Q. Who?—A. A Mexican educated in the United States, but a lawyer and an editor.

Q. Well, was he representing anybody on that occasion?—A. No.

Q. He was not?—A. No.

Q. Why do you call him Governor Galan; was he governor of Mazatlan?—A. He was governor of Lower California at one time.

Q. At that time was he governor of anything?—A. No; not governor of anything.

Q. But he had been governor?—A. He had been governor.

Q. He had no connection with this business except as a mere bystander?—A. I do not know as he had. I do not know whether Adams or Dahlgren—he used to do business for them—I do not know whether he had anything to do with them or not, but he was there and he was a lawyer and could speak English.

Q. What I want to get at is whether the Government of Mexico was represented at all on that occasion?—A. No, sir; I do not think it was.

Q. So this deposition was made up by Mr. Adams, Mr. Peña, and Mr. Dahlgren?—A. Yes, sir.

Q. And read in your hearing, and that is all you know?—A. That is all I know about it.

Q. Then this witness was never examined and sworn before you as a consul; he was sworn after his examination had been completed, made up, and written out by Peña, and read over to him, and not before?—A. No; he was not sworn before the affidavit—as I say before—this affidavit here in the Department, when he commenced to read that, then he was sworn.

Q. So you, in certifying to that deposition, did not certify to any examination that was made before you, but you certified to an agreed statement made up between Dahlgren, Adams, and Peña?—A. I certified to Dahlgren's statement, not Adams's and Peña's statement; it was Dahlgren's.

Q. I said an agreed statement made up between them?—A. No, no, no. Now, hold on. It was no agreed statement at all; it was Dahlgren's statement.

Q. Well, how do you know it was Dahlgren's statement unless you had heard Dahlgren make the statement, and knew that Peña had correctly copied it?—A. Well, I tell you, he swore to it there.

Q. Oh, that is very clear; he made an affidavit to it?—A. An affidavit to it, but I can not tell whether the affidavit was true or not, or whether what he stated was true.

Q. And you did not at that time know anything of what Dahlgren had stated to Adams and Peña before that oath was administered by you except as you heard it read over—that paper?—A. No; I do not know anything of what they had done before. As I stated before, it was not my business to get up depositions, but it was my business to swear people to tell the truth after they did get them up; that was all.

Q. Well, we happen to differ about your duties.—A. Well, that is all right.

Q. You think you had no duty to examine the witness and to state any facts that he might trip in the course of his examination in order to impeach his testimony?—A. I had no direction from the Department to do any such thing.

Q. You think you had no duty there at all as an examining counsel to see that the witness, in giving his testimony, did justice to the Government of Mexico?—A. No. It was my duty to see that the thing was done as correct as I could, I suppose, but I was no attorney on the part of Mexico.

Q. No, you were not an attorney, and that is the reason you were directed to take down the examination; that is, you were an impartial man?—A. That is it exactly.

Q. But instead of taking down an examination of a

witness whom you had already sworn to tell the truth, the whole truth, and nothing but the truth, you certified to an examination that other men signed and brought to you for a certificate?—A. No, I did not do any such thing.

Q. Well, how was it if it was not that way?—A. I certify to what he positively swears to.

Q. Now, you read that?—A. I have read it.

Q. Now, is that true or is it not?—A. That is what I certify to and he swore to it, whether the statement that is in that paper is true or whether it is not true. I certainly had no right to examine him, as a lawyer, in regard to what he knew about the affairs between Mexico and the United States or that La Abra claim.

Q. Certainly, not as a lawyer.—A. My duty as consul there—because I had no such instructions to do it.

Q. Well, what your instructions were, I don't know. I think you will find——A. They are easily found in the Department.

Q. Your instructions are to take examinations of witnesses under oath just as a notary public would, and not merely swear a man to an *ex parte* affidavit without your knowing anything about the contents of it. Suppose——A. If a man comes——

Q. No; wait a moment. Suppose on that occasion you had examined Mr. Dahlgren yourself, as consul, as a judge, and you had become satisfied he was swearing to a falsehood, would you have certified to that fact?—A. No.

Q. You would not?—A. Not if I thought he was swearing false I would not.

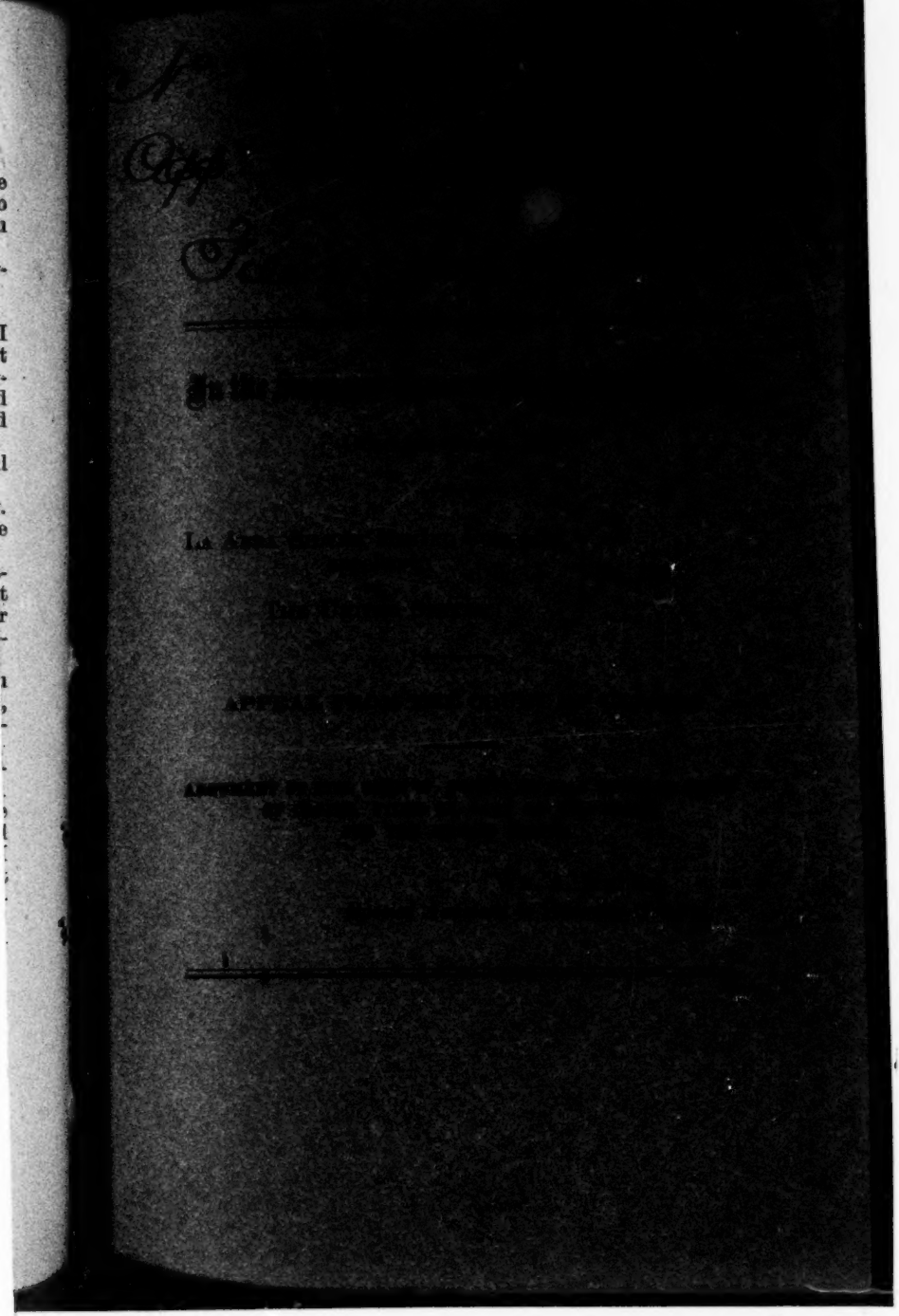
Q. Would not certify to the fact that you believed he was swearing falsely?—A. Yes; to the fact that I believed he was swearing falsely; but I thought you meant if I would certify that it was a truthful one; but if I thought the affidavit was not true I certainly should not have certified it.

Q. Well, what opportunities did you have for determining whether he was swearing to the truth or not?—A. No opportunity of determining only what he said.

Q. Well, but you had no opportunity of telling what he said except what was written down in that paper?—A. Yes.

Q. So that in fact he was not examined before you?—A. Not as a witness; no.

The CHAIRMAN. That is all. Now you can go on, Mr. Kennedy.



In the Court of Claims of the United States.

THE UNITED STATES *v.* LA ABRA SILVER MINING COMPANY and others.	In equity. No. 17917.

ON FINAL HEARING.

ORAL ARGUMENT FOR THE UNITED STATES.

THE QUESTION OF FRAUD.

Happily for all parties concerned, we are now approaching the last stage in the long and tedious history of La Abra claim. The question to be considered and determined by this court had its origin twenty years ago in a diplomatic note from the Mexican minister in this city (November 28, 1876) to the Secretary of State, bringing to his attention the allegation of the Mexican agent before the commission that this claim was "fraudulent and based on affidavits of perjured witnesses." In

response to a note from the Secretary of State respecting this allegation, the Mexican minister protested that it was not his "intention nor that of the Mexican agent to open any question whatever nor to put in doubt the final and conclusive character" of the award, but that his action was only "with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of those frauds." This action of the minister being reported to the Mexican secretary for foreign affairs, met with his approval, and he stated that "if the appeal to the sentiments of justice and equity of the United States Government * * * should for any cause whatever be ineffective, the Mexican Government will conscientiously fulfil the obligations imposed on it by that international compact" (the claims treaty). (H. Ex. Doc. 103, Forty-eighth Congress, first session, 147–150.)

The determination of this simple question of fraud has been delayed by the interposition on the part of the claimants of every imaginable defense and objection which their numerous and skillful counsel have been able to devise. The questions of *res adjudicata*, of vested rights in an international award, of the right of the Executive to withhold moneys paid under such an award, of the power of Congress to reopen an adjudicated claim, of the justice of allowing Mexico to take advantage of its alleged *laches*, of the constitutionality of the act of Congress by virtue of which the pending suit was brought, and of the jurisdiction of this court—all of these and others have been presented to the successive Secretaries of States,

Presidents, Congresses, and the Supreme Court, without any other result to the claimants but postponement of the hearing and determination of the only real question in the case, to wit, whether the award was obtained by fraud and perjury. Even in this court it has been seriously and strenuously maintained that the question of fraud is not justiciable.

At the end of twenty years, beaten on every question advanced to evade a determination of the real issue, the claimants have been driven by the combined action of the executive, judicial, and legislative departments of the Government of the United States to appear in this judicial forum, which, under the act of December 28, 1892, has been empowered—

> To determine whether the award made by the United States and Mexican mixed commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys, or assigns.

The power and duty of the court in respect to the present suit are so clearly and specifically set forth in the act from which the foregoing quotation has been made that I do not deem it necessary to dwell upon it.

THE AVERMENTS OF THE MEMORIAL.

The memorial, which is the basis of the claim upon which the award of the commission for $683,041.32 was rendered, appears in full in the bill of complaint (p. 5).

Its essential averments were: (1) That La Abra Silver Mining Company was organized in 1865 under the laws of New York for the purpose of carrying on the business of mining in Mexico, had its principal office in New York City, and the amount of its stock was $300,000; (2) that it purchased various mines, named in the memorial, in the Republic of Mexico; (3) that said mines were of such extraordinary and historical richness that they were especially mentioned by Humboldt and Ward; (4) that the company proceeded to the working of the mines, and to that end sent intelligent agents to Mexico, employed large numbers of miners, laborers, etc., and (5) purchased great numbers of mules, quantities of provisions, improved machinery, etc.; (6) that they expended in the purchase and working of the mines $300,000; (7) that they were getting out a large amount of the richest ore and were in the act of realizing a profit of $1,000,000 per annum (8) when they were compelled to abandon this property and over 1,000 tons of ore by reason of the unfriendly and illegal acts of the Mexican officials; (9) that an intense prejudice existed against all Americans, and especially against La Abra Company; (10) that the company's superintendent was arrested without cause, fined, and imprisoned without trial and without being informed of any offense; (11) that when the superintendent applied to the authorities for protection his request was refused; (12) that acts of violence were committed against the property and employees of the company, which were encouraged by the authorities; (13) that the employees became so alarmed that it was impossible to keep

them at work; (14) that the authorities repeatedly seized mule trains of the company loaded with provisions and appropriated them to their use; (15) that large quantities of ores were taken from the company, the employees being deterred by threats from resisting; (16) that things finally got to such a pass that one of the personnel of the company, in charge of one of its trains, was openly killed by the Liberal forces and the train seized; (17) that this murder was made a matter of boast by Mexican officials, and the authorities of San Dimas openly avowed their purpose to drive out all the American mining companies and get their property; (18) that one motive of this persecution was to compel the company to leave, and thus permit the Mexicans to obtain possession of their valuable property; (19) that from the said persecutions, outrages, and insecurity, it became impossible for the company to work the mines, and the same were abandoned, as aforesaid; (20) that the enforced abandonment of the mines utterly ruined the company, who sustained damages to the amount of $3,000,030; (21) that though the mines were of immense richness, it was impossible to extract ores except by heavy expenditures, which were made, but the buildings and other structures, owing to the abandonment, were of no present value; (22) that the mines with the buildings were of the value of $1,000,000; (23) that at the time of the abandonment 1,000 tons of extracted silver ore, worth $500,000, were left by the company; (24) that upon the abandonment of the mines by the company these ores were carried off by the Mexicans and lost to the company; (25) that at the time of

the abandonment the company were extracting large quantities of ore, and their profits would have been very great if they had been permitted to work the mines; (26) that the company estimate their clear annual profits which they would have obtained from the mines at $1,000,000; (27) that the company have expended $30,000 in conducting their business otherwise than in the expenditures at the mines; (28) that the claimant is a corporation of the United States; its stockholders citizens of the United States; was such corporation when this claim arose; the claim belongs wholly to the claimant, who has never received any indemnity therefor, and that it was never presented to either Government prior to February 1, 1869.

The memorial is signed "La Abra Silver Mining Company, by their attorney in fact, Robert Rose," and attested by the oath of Robert Rose, under date of June 14, 1870. But on March 17, 1870, Rose and Staunton, as attorneys for La Abra Company, had filed with the Secretary of State a notice of a claim against Mexico for the sum of $1,930,000, and asked that the claim and proofs, thereafter to be produced, might be referred to the commission between the United States and Mexico for settlement. (Bill of complaint, p. 5.)

The memorial, as I have dissected it, consists of 28 averments. I propose to establish to the satisfaction of your honors that not more than two of these averments are true in fact, that the other 26 are false in whole or in part, and that every averment which is essential to establish the claim is absolutely false.

The evidence upon which this claim was heard and determined by the commission and umpire is very conflicting, but out of this conflicting and perjured mass of testimony some undoubted facts can be found, and these facts in connection with the new evidence not before the commission submitted at this hearing, and especially the letter book of the company and the original letters of its officers and agents, reveal to us the true history of the company and furnish us with all its operations in detail from its organization to its final collapse. It is an interesting history, but by no means an unusual one up to its collapse. It is the common experience of tens of thousands of mining companies organized in the United States with high hopes, which after a series of bitter disappointments ended in complete failure and abandonment. Any traveler in the mining districts of the United States and Mexico will remember the lone chimneys, the abandoned buildings, the rusting and dilapidated machinery dotted here and there over the face of the mountains, standing as gravestones to mark the failure and death of great expectations. The unusual and extraordinary feature in the history of La Abra Company begins with the inception of the idea suggested by the creation of the mixed claims commission of making Mexico responsible for its own incapacity and folly.

INHERENT IMPROBABILITY OF THE CLAIM.

The mere reading of the memorial at once suggests the inherent impossibility or grossly improbable character of the events therein alleged. Is it not incomprehensible

that a body of Wall street capitalists, possessing unusually rich mines which were in the act of yielding a profit of one million of dollars per annum, would tamely submit to the oppression and persecution of a foreign Government without a protest, and be willing to take the chances of litigation before a claims commission? Is it not contrary to human experience to believe they would allow this valuable property to remain abandoned, without a single effort to regain it through their own Government or in some other way? When your honors come to examine this memorial, and possess yourselves of the plain and undisputed facts in the history of this case, you will apply to it the ordinary tests of credibility which are ever present in the judicial mind, and will not allow the improbable and impossible to be established by the class of evidence with which the claimants sought to maintain their memorial before the commission. I have thought well at the outset to bring this view of the case to the attention of the court, but as it is somewhat elaborated in the brief for the Government, I may be excused from further discussion of it for the present.

THE HISTORY OF LA ABRA COMPANY.

I shall not tax your honors' patience with a review of the great mass of evidence which constitutes the history of this claim, but shall as briefly as possible attempt to notice all that is important and essential to a full understanding of the facts of the case. And in the first place I desire to make a hasty review of the facts attending the creation of this company and the purchase of the

mines in Mexico. The story of these events is told at some length by Mr. David J. Garth, and alluded to by other witnesses. Mr. Garth's testimony on this point will be found in respondent's evidence, pages 70 to 73. 719 - 722
It there appears that in the year 1865 one Mr. Hardy turned up in New York, bringing a letter of introduction to Mr. Garth from a relative of the latter. Hardy claimed to own what was known as La Abra mine in Mexico. Witnesses testified before the commission that Hardy had a short time before denounced (acquired a working title to) La Abra mine, which had been abandoned for many years. (~~Ex. A, p. 446–7.~~) Hardy pp 140–141
brought with him specimens of ore, and through the exhibition of these and his representations, he induced Mr. Garth and one Thomas J. Bartholow to go with him to Mexico for the purpose of examining La Abra mine, with a view to its purchase by them and others whom they represented, living in New York and the West. Bartholow, in his deposition before the commission (~~Ex. A, 472),~~ swears that he and Garth were induced to make p 166
their visit to Mexico by a General Smith, who was the agent of Castillo del Valle and Manjarrez, the owners, not of La Abra mine, but of others in the same locality. But this statement was not true, as appears from the testimony of both Garth and Smith. (~~Ex. A, 348.~~) Smith p 42
was in New York in 1863, but had returned to Mexico without success in his effort to sell the Del Valle and Manjarrez mines. When Garth and Bartholow were ready for their journey, another person appeared on the

scene, whose relation to the affairs is best told by Garth in his cross-examination by Mr. Maury (~~Resp. Ev., 71~~): p. 720

Q. Did he (Hardy) go along with you?
A. Yes, sir.
Q. Who else went with you?
A. A man by the name of Griffith.
Q. Who was he?
A. He was a stranger to me who was mining in California and knew all about gold and silver, so he said. He was in the mining business for many years.
Q. Was he trying to sell?
A. No, sir; he went along as a sort of expert, I suppose.
Q. You say "as a sort of expert, I suppose?"
A. Yes, sir.
Q. Was he a friend of Hardy's?
A. I do not know that I had ever seen Mr. Hardy before we met him in New York.
Q. Was Griffith employed as an expert?
A. No, sir; he went with us.
Q. How did he happen to go?
A. I suppose he wanted to go. He took stock in the company to the amount of $5,000 or $6,000, I suppose.
Q. After the company was formed?
A. Yes, sir.
Q. The company was not then formed, was it?
A. No, sir.

And who were Garth and Bartholow, selected by their New York and Western friends to accompany a couple of old California miners to an unknown country to inspect a mine? Garth tells us (~~Resp. Ev., 70~~) that he was then p. 719

and had been for many years engaged in the tobacco business. As to Bartholow, he says:

Q. General Bartholow at the time he accompanied you to Mexico, what was his business?

A. I don't know precisely. I think he was probably in the banking business, or something, in St. Louis.

Q. He was not a mining engineer?

A. No, sir; he was not a mining engineer.

Q. Had he any knowledge of mining at all?

A. Not that I know of.

Q. Had you?

A. None, except what I read. I had no practical knowledge.

Q. By whom were you sent down there?

A. A number of gentlemen, who wished us to go down there with Mr. Hardy. He came to New York with his specimens.

Q. From where?

A. From Mexico.

HOW THE MINES WERE PURCHASED.

So the tobacconist and the man from St. Louis, whose occupation does not seem to be very definitely known to his associate, started off on their long journey, escorted by the mine owner and the California expert, who turned up so unexpectedly and went along just because "he wanted to go." The journey in those days (1865) was made by steamer from New York to the Isthmus of Panama, thence by steamer on the Pacific side to San Francisco, and from there by a small steamer back down the coast of Mazatlan, the steamer from Panama not

touching at Mazatlan. (~~Comp. Ev., p. 46.~~) From this port the journey to Tayoltita, where La Abra mine was situated, was a distance of about 160 miles into the heart of the Sierra Madre range of mountains and had to be made on mules. As to this journey and the state of the country at the time, Garth testifies ~~(p. 72)~~:

> Q. How did you find the country—what was the condition of the country? Was it in a state of peace or war?
>
> A. I suppose the country was in a state of war at that time, but we saw nothing of it of any consequence—not in that part of the country. I do not think there were any troops there. I do not think that I saw any troops of the Government.
>
> Q. You did not see any exhibition of any violence?
>
> A. We went from Mazatlan to Tayoltita on mules with guides. We were not disturbed by any war.
>
> Q. Was there any war going on there?
>
> A. I understood there was a contest between Maximilian and the Juarez Government, or whoever was there—I don't know now. But in that part of the country you saw very little of it. I do not remember whether General Juarez was President or not. It was the Mexican authorities against Maximilian—I think about the end of the invasion, you would call it, of Maximilian.

The history of that war is familiar to all Americans, because of its intimate connection with our own civil contest. It began in 1861, and when Garth and his companions arrived at Tayoltita it had been in progress for four years. At that time Juarez, the legitimate President, had been driven by the Imperial forces up to the

extreme northern limits of the country at El Paso, and the Imperialists were in control of the greater part of its territory, including the States of Sinaloa and Durango, visited by Garth; and this explains why he and his companions saw little or nothing of the contest during that visit. But the fortunes of war soon began to change, and during the greater part of the time La Abra Company maintained its operations in the country the two States named were the theater of military operations and guerrilla warfare.

When Garth and Bartholow reached Tayoltita they were made the guests of Castillo del Valle, the owner, not of La Abra, but of a number of other mines in that district. How he discharged his mission in part is told by himself (Resp. Ev., 72): ~~72~~ 721

> Q. (On cross-examination.) What did you do during the three weeks you were there?
>
> A. We explored these mountains and mines and went down into them.
>
> Q. Did you know anything more when you got down into them than you did before?
>
> A. Not much. Griffith was there and he claimed to know good ore; and Weidner was there and he claimed to know.
>
> Q. Whom did he represent—Del Valle?
>
> A. I don't know whether he did or not. He was in that neighborhood.
>
> Q. There were plenty of people there to show you rich ores, were there not?
>
> A. Plenty of them.
>
> Q. So that it seemed to be a very rich country in silver, from the specimens?
>
> A. I think so.

Before the Senate committee, Garth testified that Weidner was a German metallurgist and mining engineer, who had been employed by Hardy to make a survey of La Abra mine, and he exhibited to Garth the report, drawing, etc., prepared by Weidner, showing how it was to be developed; and Weidner also made assays. On the basis of this report and survey, Hardy represented to Garth that La Abra mine was very valuable. (Senate Report 2705, Fiftieth Congress, second session, p. 118.) We are not further informed by Garth as to the character of Weidner's report, but we do know from other sources what was the condition of this mine at that time. Ward, in his work on Mexico, published in 1828, and quoted in the deposition of Smith, one of the claimants' witnesses before the commission, states that Zambrano, a Spanish miner, early in this century worked La Abra, but it filled with water and was abandoned; that after his death his nephew extracted the pillars from the mine and went to Spain; and this is confirmed by Garth's statement that he was told during his visit that the pillars had been cut out and the débris had fallen to the bottom. (Senate Report, p. 123.) And Manjarres, Del Valle's partner, and other witnesses, testified before the commission that it had been abandoned for many years before Hardy denounced it. (~~Ex. A, 116, 117, 451~~. pp. 140, 141, 145) We will see later that this mine proved of no value to the new company, and little or no work was done in it.

After this inspection, the character of which may be inferred from the foregoing, Garth and Bartholow agreed to buy La Abra mine, issuing to Hardy stock in the

company to be organized to the amount of $22,000. The object of the mission upon which they had set out from New York had been accomplished, but their work was by no means ended. Men who could so easily be captivated by a stranger in New York with a lot of samples, by an unknown California miner who made himself an uninvited but agreeable traveling companion, and by a metallurgist and mining engineer who was opportunely waiting for them on their arrival at the mines, with a report of his survey and plans for the development of this historic mine—such men were fair game for this sharp Spanish miner, as he proved to be, who had made himself their host during their stay at Tayoltita. I can not do better than let Mr. Garth tell his own story, as given on cross-examination (~~Resp. Ex., 73~~):

Q. You bought some other mines there, did you not, besides La Abra?

A. Yes, sir.

Q. How many did you buy?

A. I do not remember, but a number. I think they are of record here, but my memory does not serve me now.

Q. El Cristo was one of them?

A. Yes, sir.

Q. Who did you buy that from?

A. From Juan Castillo del Valle.

Q. What did you pay Del Valle for his mines?

A. We paid him $50,000 in gold.

Q. What sort of tests did you base your judgment on, you and Mr. Bartholow, as to the value of those mines?

A. We had some of the ores that were beneficiated there.

Q. Did Del Valle have a great exhibition of silver there as the product of his mine?

A. A great deal of it.

Q. Give us an idea how much you saw.

A. It was what they call, I think, 150 pounds to a pig—something like pig lead, only it is broader and two make a carga—that is, 300 pounds, as I understood it out there. It is in 150-pound silver pigs, as I call them. I should judge there were 10 or 15 or 20 tons, perhaps, judging by what somebody said.

Q. What sort of place was it kept in?

A. In his storeroom. He had a stone warehouse and a store there surrounded by a wall.

Q. He did not live there, did he?

A. Yes, sir.

Q. Did he not live in Tayoltita?

A. That was in Tayoltita. The whole thing I am talking about was in Tayoltita.

Q. My question is, Whether his residence was at his warehouse where he had all this silver?

A. His dwelling when I was there—I suppose when he had no company there he put us in his office in the same building or room, which is twice or three times as big as this room. Then the warehouse had the silver in it, and other goods and dry goods, and he stayed in a little house near by. He had a general store there.

Q. It was an ordinary storehouse?

A. Yes, sir.

Q. Was it upon your judgment, then, that this enterprise was gone into?

A. I suppose it was, in a great degree.

This is a strange story. It seems almost incredible that intelligent business men could be drawn into a great enterprise under such circumstances. Nothing more fully illustrates the confiding character of Garth than his belief in the vast pile of silver which he saw in Del Valle's storehouse—"10 or 15 or 20 tons," he says. According to the valuation of silver at the time, as fixed by the witnesses (Compl. Ev., 83) and accepted in respondent's brief (p. 196), there was piled up in Del Valle's storehouse, in the belief of Garth, pure silver to the value of $360,000, if 10 tons, and $720,000 if 20 tons. To make such a statement is its own refutation. No man in his right mind could believe that such a vast sum of silver would be collected and allowed to remain in that remote and unprotected locality. Garth told this story to the Senate committee investigating this claim, and Senator Morgan, the chairman, who seemed astounded at his credulity, in the kindness of his heart, sought to extricate Garth from his embarrassment by some questions, as follows (Senate Report, 122):

> Q. In what part of the store did he keep these bars?
>
> A. He kept them in his storeroom. He had a store that was, maybe, 80 or 100 feet long; I don't remember now; quite a considerable house, and in that he had these stacks of silver.
>
> Q. Did they have a bright, lustrous appearance like silver, or did they look dark?
>
> A. Well, I don't think they were particularly bright. I don't remember that they shone like a new dollar or anything of that sort; I don't think they were.

Q. Do you know the distinction between pure silver and the mat from which silver is obtained by smelting?

A. No; I should think that depended on the quality of the ore; I don't know.

Q. You don't know the difference between the "mat," as it is called, and the silver bar?

A. I don't think I have seen the mat, as you describe it. He said it was valuable; I don't know. I suppose it was such as he had been always taking from there.

Senator Morgan's well-meant effort proved a failure, as might have been expected in the case of a purchaser of mines who did not know the difference between pure silver and the mat from which silver is obtained by smelting. But there are other facts which throw light upon the purchase of the Del Valle mines. Francisco Torres, a witness examined and cross-examined in this suit, an experienced miner, who had lived in the locality of these mines all his life and worked some of them, testifies as follows (~~Compl. Ev., 93–4~~):

Q. Were there any ores in those three mines, in the patio at the mines or at the hacienda, when the sale was made?

A. There were about 80 cargas or loads of ore from the mine known as La Luz in the patio of the hacienda. It was then being reduced.

Q. Did you see the ore that you speak of at that time?

A. Yes; I saw the ores.

Q. Did you see at that time the American gentleman that came to buy the mines?

A. Yes, sir; I saw several gentlemen there, but I did not know who they were. I was told that

they represented parties belonging to a company who desired to make the purchase.

* * * * *

Q. Do you know what result those 80 cargas of ores from La Luz showed when those gentlemen were there?

A. Yes, sir; I did. They yielded 500 marcos of silver, or 250 pounds of silver.

Q. How did it happen if, as you say, La Luz ores were very poor, and Del Valle and Manjarrez lost $40,000 working La Luz—how does it happen these 80 cargas yielded so much?

A. Because they found a very rich ledge of ore in the mine which produced the 80 cargas of ore which I have already referred to.

Q. Did you ever see the ledge from which these 80 cargas came?

A. Yes, sir; I saw it, and I was afterwards the owner of it, and I also lost $9,000 by the operation, having been induced to make the denouncement by reason of the richness of the ore. I made the denouncement after the mine had been abandoned by the Americans. It very often happens that rich veins are found after working the mine; then the ledge disappears and another rich vein is discovered. This happens after large sums of money have been expended in developing the mine.

My learned friend, the respondent's counsel, in his brief seems to think that Torres is not a very reliable witness, because he can not read, and in some respects his statements are alleged not to agree with those of other witnesses. I hope to recur to this matter later, but I feel sure your honors, on reading Torres's testimony, will accept it as that of a straightforward and candid witness. Assuredly he would not invent a story like the one just

read from his evidence. Witnesses before the commission testified to various other incidents calculated to deceive the American visitors as to the character of the mines; but we need hardly go beyond Garth's own testimony for such evidence. That he formed a very exaggerated estimate of the value of the mines will be shown further along.

PREPARATORY WORK AT THE MINES.

Having completed the purchase of both La Abra and and the Del Valle group of mines, Garth and Bartholow left, the former to go to New York to organize the new company, and Bartholow to San Francisco to purchase "a ten-stamp mill and other machinery and modern appliances for running or working the same at said mines." I have already shown from Garth's testimony that the enterprise was entered upon solely upon their judgment, and Bartholow in his deposition states that the purchase of this machinery was determined upon by Garth and himself. (~~Ex. A, 473.~~) We thus see from P. 167 the sworn declarations of these two persons, neither of whom had any experience whatever in mining, that they deliberately embarked on a great enterprise in a remote part of a foreign country then distracted by civil war, purchased mines, and proceeded to invest extensively in costly machinery, without the aid or counsel on their behalf of a single expert mining engineer, assayist, or practical miner. It would require no prophet to predict the result, but for a proper determination of this suit it becomes necessary to follow the history of this enterprise to its conclusion.

Up to this point we have had to depend upon the oral testimony of fallible witnesses. But from this time onward to the final collapse we proceed upon the solid ground of written evidence, recorded in regular sequence and written down at the time the events occurred and by the officers, responsible representatives and agents of the respondent in the present suit. My learned friend in his brief seeks to question the perfectness in some respects of the letter book of La Abra Company, but he accepts the genuineness of the letter book, and resorts to it frequently in his efforts to sustain his argument. This is a great gain for the cause of truth. For many years, when this book remained for months in the hands of the Secretary of State, when its contents were laid before Congress, and when the book itself was submitted to committees of Congress, its authenticity was openly questioned, and it was frequently referred to as a forgery. I shall notice more in detail hereafter Mr. Kennedy's allegations as to the imperfect state of the letter book, but I desire now to refer to some of the undisputed facts established by that book.

Garth was back in New York by November, 1865, and Bartholow had returned to Tayoltita by January 1, 1866. The first letter in the book bears date January 11, 1866, and all of those early letters are instructive as records of the initiation of the company's operations there. Bartholow's first letter (Ex. B, 239-41) to Garth, who had become the treasurer and business manager in New York, is of special importance. In this first record we have most striking evidence of the penalty which the company had to pay for the mistakes of

its inexperienced managers. It appears that they had made an error in their calculation as to both the weight of the mill and its cost. In place of 30 or 40 tons, its weight proved to be near 80, and as at that time the war was in active operation there the cost of transportation of the mill had been doubled. The cost of the mill, "at first so greatly underestimated," was increased 50 per cent in prime cost and 100 per cent in transportation. The timbers cut in the mountains for the mill frame, 100 in number, were much more expensive than estimated, 54 of which cost $23 per stick. To Garth he writes: "You may think this a very high price, but * * * it is as cheap as it can be done for." He found the site they had selected for the mill had to be changed, and he set to work blasting out great quantities of rock, consuming already 100 pounds of powder in the operation, "and will have to burn a great deal more;" but he had the consolation of informing Garth "much of it is splendid building rock;" to little purpose, however, as we know he constructed the walls of his house of adobe or unburnt brick. I should be glad to read the whole letter, but will content myself with one extract. Bartholow, after detailing the troubles he had so early encountered, writes:

> Had I at the time I agreed to remain in Mexico known that I would have to contend with half the difficulties I have even now encountered I never would have undertaken the task, but as I agreed to do it my pride is enlisted in the success of the enterprise, and I will see it through if it is possible for energy and industry to succeed.

The vision of early acquired wealth created by the tons of silver piled up in Del Valle's storehouse and by the rich ores assayed in their presence, on their first visit, seems to be fading from Bartholow's eyes after only a few weeks' experience, and he longs for the comfort of his countingroom at St. Louis. We shall see a little later how long his courageous resolution, inspired by pride in the success of the enterprise, lasted.

A month later Bartholow writes to Garth in a more cheerful strain. He had, it is true, encountered difficulties on account of the hostilities then actively waged in the country between the mines and Mazatlan, but through his intervention with the authorities he had secured safeguards for his employees and the owners of the mule trains, and very little detention and no loss of property had occurred. The intervening letters to various parties in the letter book show how he had so successfully managed affairs, and in his letter to Garth of March 7, 1866 (Ex. B, 246–48), he gives a lengthy and detailed statement of affairs. Work was actively going on at the mines, both in the extracting of ores and in tearing away the old buildings and in the erection of new ones. In "La Luz" mine he reports a small vein had been struck of "surprising richness;" $1,000 per ton is as low an estimate as he is willing to place upon it; and "El Christo" is turning out better than anticipated, and, referring to the ore, he writes enthusiastically of "the virgin gold plainly seen with the naked eye." When we compare this letter with the outcome which the two later superintendents had to report to the company, as to the value of these ores when

the mill began to turn them into silver, we are reminded of the shiploads of worthless sand which the early settlers of Virginia sent over to England, because it glittered like gold.

But the letter has some items not quite so satisfactory. The buildings projected by Garth and Bartholow have been found inadequate, and additional buildings have to be erected, and, as usual, advice is sent to the New York office of further large drafts to meet the increasing expenses. The letter is the longest in the book, and I shall have to refer to it again, but I close the present review by an extract in which Bartholow expressed both his hopes and fears:

> I am fully convinced that within quite a short period after our works are completed and running it will be demonstrated that this company owns one of the best mining properties on the continent of America, if not in the world; but this, like all other valuable property, will require close and constant attention, as well as systematic judgment and integrity, to realize the profits that ought to be obtained from it, as all may be frittered away by dishonesty or bad management, and instead of the property paying a large profit, if it should be managed like other mining property in this country, it may result in loss; but this can, in my opinion, only occur from the causes mentioned above.

The next and last letter from Bartholow to Garth was dated April 10, 1866. (~~Ex. B, 255.~~) It is a long one, but mainly devoted to two topics—the progress made in the construction of the buildings and mill, and the difficulties he has had in getting up from the seaport his

machinery and supplies, on account of the hostilities more actively waged than ever. The work had dragged along, although Bartholow claimed that under the embarrassments he had done wonders, and in previous letters (~~Ex. B, 243, 246~~) he had fixed upon June 1 as the date when the mill would be in order and crushing the ore; but this event did not occur until nearly a year after that date. The military troubles, as detailed, were certainly bad enough, but Bartholow's account shows that in every instance great consideration was shown for his company, and whatever were the delays and losses sustained, they were only the inevitable concomitants of warfare.

This letter—Bartholow's last—was only two months after he had registered that courageous resolution to see the enterprise through to success. But his successor had some time before been selected and left New York, and was then about arriving in Mexico. Nothing further is heard of Bartholow until this famous claim was being prepared for the commission, in the course of which he committed perjury with the most brazen effrontery, and to which I shall have occasion to give my attention.

SUPERINTENDENCY OF DE LAGNEL.

Julius A. de Lagnel, the new superintendent of the mines, was for many years an officer of the Regular Army of the United States, served as colonel under the Confederacy, and was a gentleman of standing, but without any knowledge of mining. He spent some weeks in New York previous to leaving for the mines, in March, 1866.

During this time he met the directors (Senate R., p. 20) and talked over matters fully with Mr. Garth, who was the treasurer and executive officer of the company in that city. (~~Compl. Ev., 18.~~) Garth told him there was no indebtedness on the mines (~~Compl. Ev., 45~~); that there remained in his hands only seven or eight thousand dollars of company funds; that he must not draw on the company; that the mill would be ready early in the summer; that he (De Lagnel) must look to the mill and ores for needed funds at the mines, and that he expected in addition to receive in New York results from the mines, of which Garth, he said, had the most exalted opinion. (~~Compl. Ev., 27;~~ Senate R., 21.)

When De Lagnel arrived at the mines he found a very different state of affairs from that portrayed to him by Garth. In place of no indebtedness, there were unpaid obligations incurred by Bartholow aggregating $24,170. (~~Ex. B, 278.~~) To meet this indebtedness De Lagnel, in spite of Garth's instructions not to draw, did draw on him, in May, 1866, for $15,000 (~~Ex. B, 264~~), and again in June for another $15,000 (~~Ex. B, 266~~). But this was not all. August 16 he writes Garth (~~Ex. B, 275~~) of the continued delays and embarrassments in getting the mill ready, and says: "I am compelled to draw on you, despite the inconvenience it may cause you," and he notifies him of another draft for $10,000. And again, on November 17, he writes Garth, in continuation of the old story sent to New York from Bartholow's first letter onward, of delays and disappointments. (~~Ex. B, 286–7.~~) This letter is somewhat pathetic, as De Lagnel details

his efforts to avoid another draft by testing the company's credit in Mexico by way of an advance or loan: "I tried in vain in the country to obtain relief, but the doubt and distrust of American companies is so great that I failed utterly;" so, rather than fall into the hands of Lareaga, the Jew, he adds: "In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of $7,000." After this we might anticipate an end of the business of drawing drafts, but the opening paragraph of the letter of February 5, 1867 (~~Ex. B, 297~~), lays the foundation for its continuance by setting forth the further delays and disappointment in the work, and concludes by stating that the only alternative of stopping operations at the mines altogether was to draw another draft, which he does, for $7,500 (~~Ex. B, 298~~). After setting forth this justification, he says: "I have acted as my best judgment dictated, and as I trust you will approve."

Here we find the company, more than a year before the final collapse came, on the very verge of suspension and disaster. It is plain from De Lagnel's letter that if he had not drawn and secured the cash upon this draft the operations of the company would have been completely paralyzed, and it would most likely have then passed into the state, as Garth described it, of "innocuous desuetude" which came upon it in the spring of the next year. I have not dwelt upon the letters of De Lagnel to the company during the year of his superintendence, in my desire not to become tedious to the court, but I commend them to your honors' careful perusal as

showing what obstacles the company had to contend with on account of its own bad management. For instance, frequent reference is made in these letters to the ditch (Ex. B, 269, 274, 280, 284, 287, 297), which was an expensive work, requiring a stone bottom and walls of nearly half a mile in length to bring water from the river to run the mill. When finished, it was found that on account of bad engineering it did not bring the water, and the work had to be all done over again, at great expense and delay. There is not a word of complaint in the letters of injustice or oppression on the part of the military authorities, but a constant reference to the difficulty of communicating with Mazatlan, the seaport, on account of the hostilities. I especially direct attention to the visit of the former owner of the mines, Castillo del Valle, who had recently returned from Spain. De Lagnel writes Garth (Ex. B, 294) that "he expresses great interest in the enterprise and its success, but makes no disguise of the fact that he thinks $100,000 too much has been spent;" and he then proceeds to tell what ought to have been done, which was the very reverse of the company's operations. Garth had apparently written De Lagnel, in the great financial straits of the company, to try to get money from Del Valle, for De Lagnel writes: "Under the circumstances there is not the slightest probability of his taking a dollar's worth of stock or advancing a cent unless he sees with his own eyes good grounds for the investment." And no relief came from that quarter.

De Lagnel had been at the mines but a short time when he notified Garth that he must provide someone

to relieve him, for, apparently in response to a letter from Garth, he writes on October 8 (~~Ex. B, 284~~): "As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in the country longer than next 1st March." Hence the letter of February 5, 1867, was his last letter to the company, but he did not get away till April, as he waited to see the mill finally in operation. The company had had full notice of De Lagnel's intention to leave so as to have provided a successor, but that was never done. Charles H. Exall had been employed and sent out from New York by the company the year before and had been at the mines for several months. As no successor was appointed, De Lagnel, who had in most emphatic terms notified the company that he would stay no longer, had no alternative but to put Exall in charge. As to this event, Garth testified on cross-examination (~~Resp. Ev., 74~~):

> Q. What was his (Exall's) qualification as a metallurgist?
>
> A. I don't know that he had any. He did not go as a miner or as a metallurgist. He just went to aid De Lagnel as an accountant or as an attendant in the store for goods to be sold and bought.
>
> Q. Did it not occur to you as a little risky to have a man so unqualified succeed De Lagnel in the charge of an important enterprise like that?
>
> A. Yes, sir; it did.
>
> Q. Did it not look like inviting disaster?
>
> A. I do not know that it did; but if a suitable man could be found—a miner or experienced mill man, or a man qualified to fill the superintendency of the mine—we intended to get him. *But it was never done.*

Q. You just let it go along in the same old way?
A. Yes, sir.

* * * * *

Q. I think you said in your examination before the Senate that you thought things would have gone much better if somebody had been in charge of that enterprise who knew something about it, did you not?

A. I think so still.

In the same connection Garth testified that De Lagnel was no miner, but "got so he could make assays." And this is confirmed by De Lagnel in his examination in this suit. He says (~~Compl. Ex., 31~~) that in conference with the officials in New York before coming out, "I told them at the same time that I had no practical knowledge of mining, and that I was not skilled, and doubted my competency to go, and went reluctantly * * * under dire pressure of necessity." In the Senate investigation (Senate R., 20) he says he told Garth he "had no previous experience as a miner; had never been in a mine." Thus the procession of incompetents follow each other in unbroken succession, and Exall, the bookkeeper, is left in charge. Before going, however, De Lagnel gives his attention once more to the business of drawing drafts. Notwithstanding the receipt of further letters from Garth telling him he could meet no more, and not to draw again, yet the dire necessity of the situation forced him, in order that Exall should not be entirely without funds, to draw again, April 10, on Garth, through the Bank of California, and have it cashed in Mazatlan. (~~Ex. B, 301.~~) This $5,000 was refused payment by the company, and was returned unpaid. But before notice of

this action was received at the mines, the funds there being exhausted. Exall drew another draft for $3,000, June 13. (~~Ex. B, 302–8.~~) But there is a significant fact connected with this draft. It had been possible to have its forerunners cashed at Mazatlan, but now the credit of the company had fallen so low no one of the merchants there would take the chances of its payment, and it had to be sent on to the Bank of California, which, having by that time learned of the fate of the $5,000 draft, refused to cash it. Its disastrous fate ended the business of drawing drafts on the home office.

SUPERINTENDENCY OF EXALL.

I will not at this time follow Exall through the period of his gloomy and inglorious régime at the mines, but ask your honors' attention to the situation of affairs in New York City. Garth had returned with most glowing accounts of his experience and with exalted ideas as to the value of the mines, as we have seen. He told De Lagnel about the records of Durango, showing by the Royal fifth what immense wealth they had yielded in former times, and was thoroughly convinced that they were the deposit of immense wealth, in proof of which he showed him a sample of ore he had brought back with him from the mines which assayed $1,000 in silver and $300 in gold per ton. (Senate R., 20–1.) It seems a company was formed without any difficulty, and all went well at the home office until the stock subscribed had been paid up. When the funds thus obtained were exhausted and De Lagnel's first drafts began to arrive,

drawn to pay the large and unknown debts contracted at the mines by Bartholow, then the trouble began. Garth, in his deposition in this suit, has told us that the stock, which had all been paid up, was exhausted by De Lagnel's drafts, and as they continued to arrive "when there was no money in the treasury the directors, including Mr. Collins and myself and some others, advanced the money to the company, and that was charged to the company." (~~Resp. Ev., 79.~~) P. 728

As a witness in this suit, your honors will find, on examining his deposition, that he is most unsatisfactory. On the very subjects about which he might give the court information of value his memory, conveniently for his interests, fails him. To-day he is an unwilling witness; but fortunately for the cause of truth and justice there was a time when Mr. Garth had a vivid recollection of events, and while they were fresh in his mind he wrote them down with his own hand, and that record is now in the possession of this court. In his letter to De Lagnel of November 20, 1866, after he had received the first three drafts drawn by him, Garth gives him notice that he will not be able to meet any further drafts (~~Ex. B, 293),~~ but, as we have seen, three more drafts followed each other in quick succession. Garth had received one of these last, being the fourth drawn, when he wrote his letter of May 10, 1867, to Exall, the original of which is on file in this court and is printed in full in Exhibit B, ~~318~~, of complainant's bill. He there says: P. 287 P. 252

> The affairs of the company here are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any

further aid from here, and look anxiously to be reimbursed very soon from the products of the mine, and it is to be hoped your best energies will be exerted to afford relief.

The next letter, of May 20, reports the manner in which the fifth draft was paid, and the fate of the sixth and last draft (that for $5,000), as follows (~~Ex. B, 319~~):

We are yet without any advices from the mines later than 5th of February last, dated at Mazatlan. At that date we were advised that everything, after a long delay, was about complete, and that we might soon look for good results from the enterprise; but that, the supplies being exhausted, it was found absolutely necessary to draw on us for $7,500. This draft arrived on 2d April last, and was paid by one of the directors of the company, as it was considered that was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin when the last steamer arrived, instead of bringing Col. De L. with some fruits of our works, a draft for $5,000 gold was presented for payment by Lees & Waller, drawn by De Lagnel, from Bank of California, and dated 10th April last, and of which we had not received any notice or advice whatever, and have not yet received any. * * * As it was found impossible to raise the means to pay the draft, it was protested and returned unpaid, and you must make some provision for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise money here and have failed and I have advanced all I can possibly do, and the other directors have done the same; the

stockholders will do nothing, and it is probable the company will have to be sold out and reorganized.

This protested draft made its way back to Mexico, as indicated in Garth's letter, and we have the following account of it in Exall's letter to Garth of October 6 (~~Ex. B, 310~~):

> The $5,000 draft of De Lagnel's was sent to a house in this place (Mazatlan) to be collected, with instructions to seize the property in case it was not paid. It troubled me a great deal, and I had much difficulty in warding it off. The concern to whom the draft was sent showed me his instructions, and also the original draft. Fortunately for the company, there was a flaw in the draft. De Lagnel failed to sign his position as superintendent La Abra Silver Mining Company; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property. I told them they could do nothing with the property here, as the company were not obligated on the draft.

But two months later the draft again appeared to plague Exall, as he wrote Garth December 18 that the agent of the Bank of California was about taking steps to bring suit in the Mexican courts, notwithstanding the shrewd defense he had before set up; and he writes Garth (~~Ex. B, 313~~):

> For God's sake, telegraph to and pay them. Matters of this nature once getting in these courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter, pay them before things go further.

THE BANKRUPTCY OF THE COMPANY.

Meanwhile an important event had occurred in New York. We have seen what exaggerated views Garth, and doubtless the other directors, had as to the great richness of the mines. Their patience had been severely tried on account of the long delay in getting the mill in operation. Garth's letters show that they expected that event to be followed by immediate and large shipments of bullion to New York to pay off the debts and to begin to make dividends to the stockholders. But your honors will notice that the next letter from Garth reports the arrival of De Lagnel in New York. He had been in charge of the mines for a year, during which time large quantities of ore had been extracted to be ready for the mill when finished. He was fully informed of the difficulties that had to be surmounted, of the great additional outlay which had occasioned his oft-repeated drafts, and was conversant with the exact conditions of affairs at the mines; and he had overstayed his time there long enough to get the product of the first run of the new mill, which had been awaited by all with such great expectations. De Lagnel reached New York between May 20 and May 30, 1867. In his letter of May 30, Garth writes to Exall (~~Ex. B, 319~~): "Since my last letter Colonel De Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results." Garth and his associates are at last disenchanted. Their dream of great wealth is over. Garth's "very exaggerated ideas" of the mines, as to

P. 437

which De Lagnel testifies (~~Compl. Ev., 27~~), are all changed. De Lagnel has made his report—a plain, unvarnished tale.

P. 284

Garth writes again to Exall, June 10 (~~Ex. B, 320~~): "The account that Colonel De L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes." And he adds: "There is no money in the treasury, and we have no means of raising any, and a few of us have advanced all that we can do." It was apparent the company had reached a crisis in its affairs, and the directors proceeded to recognize it in the most serious manner in their power. Garth, as we have seen, had already written Exall "it is probable the company will have to be sold out." And in execution of this intent the directors proceed deliberately to commit felo-de-se—to advertise to the world the bankruptcy of the company—a practical winding up of its affairs. We have seen that Garth had met De Lagnel's drafts after the company's treasury was exhausted by advances from several of the directors. For these advances notes had been given by the company, and these notes had all been indorsed over to John H. Garth, brother of David J. Garth, the treasurer and executive officer of the company, and a friendly suit against the company was brought, June 8, 1867, by John H. Garth, in Kings County, New York, Britton & Ely, the attorneys of the company, being the plaintiff's attorneys also. The indebtedness was represented by eight notes held by six different directors named in the suit, and a judgment by default was rendered July 3, 1867, for $53,670.11. (~~Compl. Ev., 8.~~)

P. 468

After this formal confession of the bankruptcy of the company by its own officers little else remained to be done. Not another dollar was sent to the mines and no more drafts paid. The only return from the mines ever received in New York was the result of the first run of the mill, which Garth describes "as a little piece of bullion silver that came from there. I think it brought about $300." (Resp. Ev., 68.) P. 717

Garth in his subsequent letters to Exall still expresses some languid hope that the ores may be found better than reported, but he gives him distinctly to understand that no further help can be expected from New York. One week after the bankrupt judgment, July 10, he writes Exall (Ex. B, 321): P. 285-

> You will see from all my letters that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the lowest possible point.

But he prudently adds in regard to benefitiating the ores on hand:

> If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned.

Under date of August 10 he writes again to Exall (Ex. B, 322): P. 286

> The directors of our company are trying to reorganize and to raise money to pay off the debts and to prosecute the work anew if possible, but I am constrained to say with but little hope of success.

The correspondence from Garth closes with his letter of October 10, 1867. He there acknowledges receipt of Exall's letter of August 5, with which is inclosed the only report of the run of the mill of which we have any detailed record. After reading it Garth writes (~~Ex. B, 322~~):

P. 286

> We are deeply pained to find that you are not well and that you are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses, and avoid embarrassing yourself with debts.

The letter closes with a reference to the $5,000 protested draft, which is back again in New York to disturb the directors.

The Exall letter of August 5, whose receipt is here acknowledged, contains the run of the mill from May 27 to July 13. The report there given shows that ores which cost the company in extracting and reduction $29.06, yielded the company $18.78, or a dead loss of $10.28 per ton. Well might the treasurer write to the superintendent: "If it costs more than it comes to * * * the sooner we stop the better for all parties concerned." And it appears this advice was acted upon at the mines. The letter was received by Exall in December, as appears from his letter of the 18th (~~Ex. B, 313~~):

P. 277

> Received by steamer yours of October 10, informing me of your inability to send me the means to

> operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me, and begged that you would do something. Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money.

Then follows an account of his troubles over the $5,000 protested draft, and in closing states: "I am doing nothing at the mines, and have only one person left with me." His next and last letter is January 24, 1868. He had no letter from Garth to acknowledge, and in the silence of the home office he sends forward this wailing inquiry (~~Ex. B, 317~~):

> What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you I intend leaving for the East.

And we know from Exall's letters to Granger that he carried out this intention and did leave the mines the last of February and went on to New York, and on his arrival there found Garth and the directors unwilling to do anything or to take any further interest in the bankrupt enterprise. I shall not at this time review the Exall-Granger letters, as I shall have occasion to do so later.

THE CAUSES FOR THE COMPANY'S FAILURE.

Thus ends the history proper of La Abra Silver Mining Company, for the events which followed are merely the history of a gigantic fraud. I have dwelt at some

length on this branch of the subject, because I have felt that it was of essential importance that your honors should have a clear statement of the real history of this enterprise. It is established beyond any doubt that it was undertaken upon the judgment of men who had no practical knowledge whatever of the business and who were misled by designing men; that it was undertaken at a most inopportune time, and in a locality distracted by civil war; that its managers and all its superintendents were entirely unfitted for their positions, without any knowledge of mining, and as a consequence the enterprise was badly planned and money uselessly expended; that at the end of long delays when the ores came to be reduced they were found unprofitable; that the company, hopelessly in debt, went into practical bankruptcy, and had no other recourse but to abandon the enterprise. These facts are supported by such unimpeachable evidence that no amount of perjury can overthrow them. Had they been as fully before the commission as they are now submitted to this court, the claim of the company would undoubtedly have been rejected. But the question which your honors have to determine is not the integrity of the claim,* but whether the award under it was obtained by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the company, its agents, attorneys, or assigns. I accept the

* Later in the argument, attention being called to this assertion by one of the justices of the court, Mr. Foster stated what he meant to say was that the claim was not before the court upon its merits with a view to rendering an award, as was done by the commission, but for the purpose of determining the question of fraud as set forth in the Act of 1892.

contention of respondents' counsel in his brief that the Government is bound to prove this fraud, and I propose to show that this has been established beyond any doubt.

THE LETTER BOOK OF THE COMPANY.

An important part of the Government's testimony to prove the fraud is the company letter book, the authenticity of which is admitted; but a strong effort is made to create the impression that the book has been tampered with and that important letters have been abstracted—letters which, it is alleged, were pasted in at Mazatlan. I am ready to admit that De Lagnel did write certain letters soon after his arrival in the country which do not appear in the book, but I contend that their absence is properly accounted for. Drafts were drawn in May and June, and De Lagnel thinks he must have notified Garth of these and that he wrote a letter to Garth about the condition of affairs at the mines, so different from Garth's representations. Then letters were written at Mazatlan, to which place he had gone in company with Bartholow, who was on his way home. De Lagnel deposes, referring to Bartholow (~~Compl. Ev., 36~~), that "when he gave me the books he held them in his possession until the very last moment." And this statement is confirmed in a letter to Garth, written later, in which he says: "General Bartholow continued to hold the books for settlement and balances up to the date of his leaving, delivering them to me at Mazatlan." (~~Ex. B, 292.~~) If, as De Lagnel testifies, he wrote these letters at Mazatlan, he did so before he had possession of the books, and that

is a good reason why they do not appear. De Lagnel has a distinct recollection that he wrote another letter not in the letter book about an assay at La Puerta. As to copying the letter, he says (~~Compl. Ev., 36-37~~):

> Q. Now, do you know of any reason why that letter does not appear in the letterpress copy book?
>
> A. I can not answer that question.
>
> Q. Have you any recollection as to whether you made a copy of that letter in the letterpress copy book or not?
>
> A. I have no recollection of it now, but I take it for granted that I must have.

When first asked he thought he wrote the letter at Tayoltita, but on cross-examination he could not say whether it was at Tayoltita or at Mazatlan. At this distance of time we can well understand how uncertain must be one's recollection of such details. De Lagnel says he was accustomed to write private letters to Garth (~~Compl. Ev., 36, 47~~) which he did not copy in the book. Of one of these he speaks as follows (~~Compl. Ev., 47~~):

> Q. Why did you ask Mr. Garth to come down in the private letter of which you speak, which is not found in the press copy book?
>
> A. Because I felt that I was unequal to the charge, and I did not care to have anyone's interests in my hands to their injury.
>
> Q. What induced this feeling on your part?
>
> A. I suppose the feeling that everybody has who feels himself in a false position. My idea was that an expert, a man well versed in the business, should be there. There was too much at stake, too much at interest, and I felt that I was not equal to it, and, therefore, I asked him to come down and look at

> the condition of things himself, and if he saw fit, to either take charge himself or put some fitting person in charge.

If such letters as this were intentionally omitted from the book, we may well understand why others do not appear, without imputing foul dealing. Respondent's counsel refers to other letters which he would have us believe were purposely abstracted, but there is no positive proof that any of them were actually copied in the letter book. The original book is in the hands of the court and we confidently invite a critical examination of its condition. It will be found that its numbered pages are consecutive, and when it is remembered that it was ten years after Exall abandoned the mines before the book came into the possession of the Mexican Government, it must be admitted that it has been well preserved in that out-of-the-way corner of the world.

WORKS OF HUMBOLDT AND WARD.

I propose now to take up the averments in the claimant's memorial, and the false and perjured testimony presented to sustain them. After naming the mines which the company purchased and owned, the memorial says: "Said mines were of extraordinary richness, so much so that they became of historical interest, being especially mentioned for the abundance and richness of their ores by Baron Humboldt and Mr. Ward in their respective works." In view of this averment, and of the interest manifested by some members of the court on this point at the former argument, I have thought it of sufficient importance to notice it. Bartholow, in his

affidavit, swears (~~Ex. A, 472~~) he "had noticed the flattering accounts of the wealth of said mines by Baron von Humboldt and the English explorer, Ward, in his history of the successful working of said mines at Tayoltita by the celebrated Zambrano." Smith, the other witness for the claimant, to sustain this averment, is more precise. Speaking of the group of mines owned by La Abra Company, he says (~~Ex. A, 346~~): "They are somewhat famous in history, having been favorably spoken of by Baron von Humboldt in his Book of Travels (Essai Politique), and commented upon at length by the British explorer, Ward, in reference to this same La Abra property." An examination of Humboldt's "Essai Politique" fails to find a single reference to any one of the mines owned by La Abra Company.

The portion of Ward's Mexico quoted by Smith in his deposition is as follows:

> (Page 559:) "The great streets" (of Durango), the Plaza Mayor, the theater, and all the principal public edifices were built by Zambrano, who is supposed to have drawn from his mines at San Dimas and *Guarisamey* upwards of thirty millions of dollars. (Page 573:) A little below *Guarisamey*, and in the *same ravine*, in the district of San José *Tayoltita*, which contains the celebrated mines of "*La Abra*," one of the last worked by "Zambrano." It was opened in bonanza, and continued so, to the depth of 100 varas, where the progress of the work was impeded by water, and this was never drawn off in consequence of the death of the proprietor (Zambrano), which took place at Durango in eighteen hundred and seven (1807). His nephew, at the commencement of the revolution, collected what money

he could by extracting the pillars of all the mines belonging to the house of Zambrano, and fled to the peninsula with the produce. The mine now belongs to Don Antonio Alcade, one of the executors of Zambrano, and *would, if worked anew, with a little science and activity, probably yield immense profits.* The whole should be undertaken, however, as *one* negotiation, as in such insulated districts to make roads and organize supplies for a small establishment is a very unprofitable task. Of the amount of the silver drawn from the Sierra Madre by Zambrano during the twenty-five years that he continued his labors, nothing *certain* is known; but Mr. Glennie, from whose notes I have borrowed the whole of the details given above, states that he himself saw in the *books of the custom-house of Durango eleven millions of dollars registered as the sum paid by Zambrano as the "King's fifth,"* and this fact was confirmed to me by the *governor, who examined the registers himself in order to ascertain it.* It is likewise corroborated by the number of mines opened at Guarisamey and the surrounding districts, by the *peculiar richness of their ores* and by the immense wealth of Zambrano (diminished as his profits must have been by the expenses of working), of which so many splendid monuments remain (p. 130). *These immense riches were derived principally the five great mines,* "La Candelarea" (at San Dimas), "San Juan Nepomuceno," "Cinco Senores," "La Abra," and "Tapia." On another page, which I have failed to enter upon my note-book, he says, "These mines often yield 20, and even as high as thirty (30) marks per carga of 300 lbs."

The foregoing are the quotations made by Smith. But there are other parts of Ward's Mexico as pertinent to the case as the extracts already quoted. In Vol. II,

page 22, it is stated that the Guarisomey and San Dimas districts produced in fifteen years (1810–1825) $461,176.

(P. 74:) In every other commercial enterprise *some previous acquaintance with the subject* might have been thought necessary; but the mines were to be an exception to all ordinary rules, and on the principle, I suppose, of taking *omne ignotum pro magnifico* vast sums were embarked in schemes of which the very persons who staked their all upon the result know literally nothing except the name. (Pp. 75–6:) Nine-tenths of those who engaged in the arduous task did so under the conviction that *water* was the only obstacle which they had to overcome, and that the possibility of surmounting this by the aid of English machinery was unquestionable. * * * The practical experience of the native miners was underrated; their machinery condemned without any previous inquiry as to its powers or the different degrees of perfection which it had attained in the different districts. Gradual improvement was pronounced too sluggish a process, and Cornwall was drained of half its population in order to substitute an entirely new method for that which had been endeared to the Mexicans by the experience of three centuries. The total failure of this attempt was the natural consequence of the want of consideration with which it was made. * * *

(Pp. 80, 81:) In general the selection of mines among the first adventurers was determined by a reference to Humboldt. * * * Humboldt never asserted, or meant to assert, that a mine, because it was highly productive in 1802, must be equally so in 1824. * * * Unfortunately, the consequence of these statements was to direct the attention of

the world exclusively to spots which, from the enormous quantity of mineral wealth that they have already yielded, may fairly be supposed *to have seen their best days.*

HOSTILITY OF THE MEXICAN AUTHORITIES.

The gravamen in the claimants' memorial is the hostility of the Mexican authorities, and this is repeated in a variety of phrases. It avers that the company were compelled to abandon their property "by reason of the unfriendly and illegal acts of the Mexican officials." After reciting in general terms these acts, it states that "from the said persecutions, outrages, and insecurity it became impossible for the company to work the said mines, and the same were abandoned;" and "that the said enforced abandonment of said mines utterly ruined said company." These averments are supported in the memorial by certain alleged illegal and violent acts, but it carefully avoids giving names, dates, or places, and we are therefore driven to the testimony before the commission to ascertain with any precision what are the acts relied upon to support the memorial and the award. I propose to take these up, as far as possible, in chronological order.

THE SEIZURE OF MULE TRAINS.

It is claimed that the company "purchased great numbers of mules and their equipments," and that "the authorities repeatedly seized mule trains of the company loaded with provisions and appropriated the same to their use." This allegation it was sought to maintain before

the commission by various witnesses. The most of them plainly base their testimony upon hearsay evidence, but the three witnesses who are in any degree precise in their statements are Bartholow, Exall, and John Cole. Bartholow swears (~~Ex. A, 476~~):

P. 170

> Two entire mule trains, loaded with provisions and supplies, belonging to said company, were captured by the military authorities of the Mexican Republic, and the mules and supplies so captured and taken by force were appropriated to the use of said army, and I never was able to recover any of said mules or supplies.

Deponent then proceeds to relate his appeal to General Corona, who referred him to a General Guerra, or Parra, without success. He says (~~Ex. A, 477~~):

P. 171

> The value of the mule trains and supplies so taken from the company by said military while I was superintendent was not less than $25,000.

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Exall swears (~~Ex. A, 461~~):

> Under Colonel De Lagnel and my own superintendence about 125 [mules] were so captured [by the military] on the road from Mazatlan, and about 20 stolen from the hacienda. I do not know how many were so taken from the company under Gen. Thomas J. Bartholow's superintendency, but I have understood from him that a number of trains were so captured by the said military.

But John Cole is the witness who deposes to the seizure of the trains with most precision. (~~Ex. A, 362.~~) He says:

P. 356

> He had the control of the forwarding of said machinery and supplies by three, and sometimes

four, mule trains owned by and in the employ of said La Abra Company, consisting of about 40 mules to the train. * * * The authorities of the district of San Dimas * * * to the knowledge of deponent, seized upon three of the mule trains of said company during the year 1866 and the early part of 1867, and converted the same, together with all the supplies packed upon them, to their own use or the use of their Government * * * (p. 364). The mules captured from the said company as aforesaid were of the largest and best quality of mules; they were worth as much money as any mules in that country; about 120 of them were so captured, to his knowledge. I have never known said company to own a poor or bad mule or a poor horse. * * * He does not know the amount or value of the supplies taken from said trains, but it was common report amongst Mexicans there, at the time of the forced abandonment of said mines and property of said company, that it had lost mules, pack saddles, and supplies, in the three years named, to the amount of $75,000 to $100,000.

Now, I make the declaration boldly that there is not a scintilla of truth in the statements of these three witnesses, and this is plainly apparent from an examination of the letter book. The mines being situated in the heart of the Sierra Madre Mountains, accessible only by bridle paths, the heavy machinery and supplies for the company had to be packed on the back of mules from the seaport of Mazatlan. The most of this work was done in the time of Bartholow's superintendence, early in 1866. In the short space of three months it will be seen that Bartholow refers to this business of packing

more than a dozen times in the letter book, and describes it in great detail. It is there made plain that the company had only a few riding mules and never owned any of the pack trains of mules, but that they were all hired of Mexicans who were engaged in the business. In his first letter to Garth, he writes (~~Ex. B, 239~~):

> Mr. Griffith, William Grove (a new man from Saline County, Mo.), and Dr. Hardy, has charge of all the pack trains; each manages and controls a train; this is necessary for the reason that if some American in the employ of the company is not constantly with the trains, there is great danger, if not a certainty, that the animals would be taken by the military authorities, and besides, I could not get the Mexicans to pack for us unless I agreed to do this; besides, with this arrangement I have a guarantee that my men, animals, and effects will not be interfered with. * * * (~~p. 240~~). After the Liberals got possession of the country and confiscated large numbers of mules, it was with the greatest difficulty that I could get any one to agree to pack at all; and had I not succeeded in getting military protection, our mill would now be lying at Mazatlan.

I give a few more extracts. Writing to J. S. Rice, Bartholow says (~~Ex. B, 245~~):

> Some weeks since I sent to Santiago Papasquia for a lot of mules to pack for me. Some came promptly and are now in my employ, and to-day about 70 more arrived, all of which I fear I can not employ, yet I think I need 20 or 30 of them to finish up my freight from below.

And the remainder he offers to let Rice have. To William Scott, one of the company's employees, he writes (~~Ex. B, 245~~): "The bearer of this letter has a pack

train of 64 mules, which I have hired;" and he proceeds to tell Scott how to employ it. In his next letter to Garth, March 7, he says (~~Ex. B, 246~~): P. 213

> You will bear in mind that our machinery, 80 tons, arrived in Mazatlan December 12; the country through which it was compelled to be packed occupied by Liberal troops and the theater of military operations. This army had taken possession of all the pack animals in the country between here and the port, and therefore I was compelled to send to the vicinity of the city of Durango for mules to transport the mill; and when the animals were obtained I was under the necessity of sending to General Corona for his protection and a guarantee that the men and animals in my employ should not be taken by his forces. All this I obtained, but not without difficulty.

When Bartholow turned over to De Lagnel the charge of the mines he gave him a written statement of various matters, among which is the following (~~Ex. B, 260~~): P. 224 "The company owns 12 mules and 10 aperajos. The titles to these mules I believe to be good."

In the score or more places in the letter book where the subject of packing and mules is referred to, there is not a single allusion to the seizure and confiscation of mules or trains, but on the other hand repeated instances where the authorities showed special favor to the company respecting them. De Lagnel, in his deposition in the present suit, testified as follows (~~Compl. Ev., 29~~): P 487

> Q. Did the company, to your knowledge, during your superintendency, own mule trains?
>
> A. At most they owned twelve mules; not that many all the time, but that is the largest number I ever knew; that is the number of pack saddles we had.

Q. What became of those mules, as far as you know?

A. One or two were lost, I know; strayed or stolen, I couldn't say which; the others I turned over to Exall.

Q. Where is General Bartholow?

A. I heard he was dead, sir; I don't know.

Mr. KENNEDY. We admit his death.

Q. Do you know whether, during General Bartholow's ascendency, the company owned any mules more than you have mentioned?

A. I couldn't say, sir.

Q. Did you converse with General Bartholow when you took charge, in a general way, about affairs?

A. Yes, sir; but I didn't get much information. Yes, he talked to me about it, but I didn't derive all the exact and precise information that I wanted.

Q. Do you recollect whether he told you that the company had owned any mule trains during his superintendency?

A. He never told me that they owned any, any more than I mentioned.

Q. Did he ever tell you anything about any mule trains belonging to the company being captured by Mexican soldiers?

A. No, sir.

Q. Now, did he tell you anything about the detention of trains not owned by the company?

A. There was a hired train that had been seized. He wrote to the authorities and the train was released.

Q. Do you remember General Bartholow's telling you this?

A. Yes, sir.

Frederick Sundell, who was in the employ as assayer of the Durango Mining Company at San Dimas, in the same district, only separated by a ridge of the mountain, and had intimate acquaintance with La Abra Company during the whole period of its existence, in his deposition in this suit stated that his own company did not own its pack mules, but that all its supplies were transported by hired trains. As to La Abra, he testified as follows (Compl. Ev., 66):

Q. Do you know how La Abra Company transported its supplies?

A. The same as our company; by pack trains, pack mules.

Q. Do you know whether La Abra Company owned any mules of its own?

A. No, sir; they never owned any pack mules.

Q. About how many mules did they own, if any?

A. I do not know, but I should think from eight to ten riding mules, used by the superintendent and other employees.

Q. Did you ever hear of any mule trains belonging to or in the employ of La Abra Company being taken by the military forces of the Liberal army?

A. Not during my time, when I was there.

Q. Could there have been any such seizure without your knowing it?

A. No. I understand there was some little trouble before I came there, but they never lost anything. They only borrowed the mule trains and brought them back again, but I could not say anything about it.

On cross-examination, he said he derived his information from George Grassie, who had charge of the Durango

Company's transportation, and was well acquainted with Mr. Grove and Dr. Hardy, who had charge of that of La Abra Company. (Compl. Ev., 84.)

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Other witnesses testify to the same effect, but really it is unnecessary to go outside of the letter book to establish the utter falsity of the averment in the memorial as to the seizure and confiscation of mule trains by the Mexican authorities.

Intimately connected with this averment is the following:

> Things finally got to such a pass that one of the personnel of the company, in charge of one of its trains, was openly killed by the Liberal forces and the train seized, and that was made a matter of boast by Mexican officials.

THE MURDER OF GROVE.

Various witnesses on behalf of the claimant before the commission testified to this fact, such as Green, Granger, Clark, and Bouttier, but as their statements are upon their face mere hearsay, it is hardly worth while to quote them. The witnesses who claim to speak from personal knowledge are John Cole, Exall, and Bartholow. Cole swore (Ex. A, 362) that "upon one occasion one of the officers, an American, in charge of one of the said mule trains, was killed by the said troops for attempting to defend the property in his charge; he was acting quartermaster of said train at the time. Deponent says he has heard Mexican soldiers in said Liberal service at that time boast of this murder," and he proceeds to narrate a conversation he afterwards had with

P.S. 6

the captain who commanded the force which seized the train and killed Grove, who told him "referring to the aforesaid murder, * * * that it would 'learn the gringoes' (foreigners) a lesson; that when they (the troops) wanted anything in future they probably would not be denied, as they had been by the quartermaster of La Abra Silver Mining Company's pack trains, * * * and said Mexican officer also told deponent * * * that the capture of said mule train was ordered by his superior or commanding officer."

Exall, who came to the mines after the death of Grove, claims to know the facts as to his murder from official sources. In answer to the question in his deposition as to his knowledge of the murder of one of La Abra employees, and his name, says (~~Ex. A, 465~~):—

> Captain Grove was the person. It was under the superintendency of General Bartholow. Mr. Grove was captain of the supply train, and one of the principal employees of said company. He was murdered by said military, in the district of San Ygnacio, State of Sinaloa, while on the road to the company's mines, and a train of mules loaded with supplies for the company were taken from Grove, as conductor in charge of said train. I am of course familiar with the history of that murder, by reports of the company's officers. I have heard it all, not only from the company's officers, but the Mexican officials. * * * Some of them condemned, or said they condemned, the cowardly plan of said capture, and the brutal and unnecessary murder of Mr. Grove while trying to protect the property of the company under his charge.

Bartholow, being asked as to the name and circumstances attending the murder of one of the company's employees, deposed as follows (~~Ex. A, 477–8~~):

> A. His name was William Grove. He was one of my most valued employees. He was murdered between the town of San Ygnacio and Tayoltita. I afterwards recovered his body. It was badly mutilated by gunshot wounds, evidently produced by a volley of musketry. This occurred in January or February, 1866. At the time of the murder Mr. Grove was in the employ of the Abra Company as quartermaster, and was intrusted with the charge of one of our mule trains, used for transportation of supplies. Mr. Grove was murdered by soldiers of the Republican army. The train that was the special charge of Mr. Grove was taken possession of by the military authorities, with its entire outfit and supplies, all of which were totally lost to the Abra Company. The mule trains owned and worked by the company at that time were three in number, aggregating about 150 mules. The train so taken was one of the three here mentioned.

"Mark, now, how plain a tale will put down" this army of perjurers. We have in the letter book a full account of the murder of Grove, written by Bartholow immediately after the event occurred. In his letter to Garth of March 7, 1866, he says (~~Ex. B, 247~~):

> In my last letter I informed you that one of my employees, Wm. Grove, esq., formerly of Saline Co., Mo., was missing, and I feared had been waylaid and murdered. Since then my worst fears have been realized, for, after a search of two weeks, his body was found buried in the sand on the bank of the Piastla River, some ten miles above the mouth of Candalaro Creek, near where he had been murdered.

At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol, and clothing have not yet been found. The mule is, however, likely to turn up, as it had our hacienda brand "U. S." on the left shoulder. These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Señor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These, we are assured, will be tried by court-martial, and if found guilty will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking. He had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had nominally purchased a train of pack mules in Mr. Grove's name, and sent him to San Ignacio to obtain a permit for them to pack for me and a guarantee that they would not be taken by the army. He succeeded in getting these documents and was on his way home to take possession of the mules and start them to packing. He passed the night previous to his death at the house of one Meliton, at Techamate, the place where, you will recollect, we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation, was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to pay $4,000 for it, and was on his way to take possession of it and start it to

work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places.

In the next letter to Garth, April 10, Bartholow narrates the conclusion of the Grove affair in these words (Ex. B, 256):

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I wrote you fully in my last letter detailing the circumstances of the murder of William Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand and arrested one of the murderers at this place. The villain was actually in our employ, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men if the prospect for plunder was sufficient to warrant the risk. When the officers arrested I had him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but was convicted for the murder of a woman, who he killed previously, and sentenced to be shot, and before the execution of the sentence he confessed the murder of Grove and revealed the names of his two confederates. These two would have been arrested before this but for the expulsion of the Liberals from the country. Now we will have to wait for the Imperialists to put their officers in power before we can act any further in the matter.

THE ROBBERY OF SCOTT.

Shortly after the murder of Grove the robbery of one of the employees of the company occurred, and that is also made the foundation of a charge against the Mexican authorities, and constitutes one of the alleged series of outrages and exactions which finally culminated in driving the company out of the country. Bartholow's account of it, as sworn to before the commission, was as follows (~~Ex. A, 477~~): P. 177

> One of the employees of the company, who had been sent to Mazatlan on business, was robbed by said military authorities near Camacho, in Sinaloa, while on his return from Mazatlan to the company's works, of eleven hundred and seventy-eight dollars of the moneys of the company, which amount never was repaid to the company, nor was the company ever indemnified for the same in any way. I recollect the exact amount taken, because I entered the same on the books of the company, charging the same to the "robbery account," where other "prestamos" and robberies were entered. The name of this employee who was so robbed of the company's money, was George Scott, commonly called "Scotty." This transaction was nothing less than highway robbery by said troops, and was in addition to the several "prestamos" levied and enforced by the military authorities, which, I have said, ranged from three to six hundred dollars.

Clark, among others, supports Bartholow before the Commission as to this robbery, but as his account differs somewhat in its details I quote his words (Ex. A, ~~309~~): P 63

> And deponent further says, that he knows of other abuses of said company by the military authorities

aforesaid; that in the early part of 1866 an employee of said company, whose name, deponent believes, was George Scott (called "Scottie"), who was on his way from Mazatlan to the works of the company in Durango, was met in the road by an armed party of the said military between Mazatlan and deponent's residence in Camacho, and said armed party of troops of the Republican army of Mexico did, by force of arms, take from said Scott, or "Scottie," about twelve hundred out of three thousand dollars in gold coin ($3,000), Mexican ounces [187½ ounces], which money belonged to said "La Abra Silver Mining Company," and was being transported by the said "Scottie," who appealed to deponent to visit with him the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headquarters with the said "Scottie," but was informed by the commanding officer that he could not give up said money. After said Scottie had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted and returned to report the facts to his company at Tayoltita.

A full account of this affair is also found in the letter book, and effectually puts a quietus on the charge of bad conduct on the part of the Mexican authorities. In his letter to Garth, of April 10, Bartholow writes (Ex. B, ~~255–6~~):

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> In consequence of the unsettled state of the country, and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from

time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time; yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1,000 per week, and of course all that the proceeds of the sales of goods did not supply had to be brought from Mazatlan, but I so managed it that we never had more than from $1,500 to $2,000 at risk at one time, and all came through safe except in one case. This occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1,000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about twenty miles out from the port, near the town of Comacho, six or eight armed men sprang into the road, and with their guns leveled upon him forced him to dismount, and robbed him of $1,178 in money, his pantaloons, and boots (the latter, however, being No. 12, were too large for any of the villians, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also, at the same time, opened a correspondence with General Corrona through the prefect, Col. Jesus Vega, at San Ignacio, who, by the way, is, I think, one of the most perfect gentlemen I have met in the country, and I am of the opinion that but for

> the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1,178 to profit and loss.

FORCED LOANS OR PRESTAMOS.

In further support of the averment of hostility and persecution on the part of the Mexican authorities, testimony was introduced before the commission to show that forced loans or prestamos were levied upon and exacted from the company both during the superintendency of Bartholow and De Lagnel. Bartholow's deposition is full of vague and indefinite charges of hostility and persecution on the part of the Mexican authorities which, because of their indefinite character, it is hard to refute. As to the forced loans he deposes (Ex. A, 477):

> I was also compelled by the military authorities of the Republic, under the command of General Corona, to pay a number of "prestamos" or forced loans, levied upon said Abra Company's stamp mill, machinery, and supplies, from $300 to $600 each, one of which, for $600, was paid for me by William G. S. Clark, of Camacho.

In referring to the robbery of Scott, he says: "I recollect the exact amount taken, because I entered the same on the books of the company, charging the same to the 'robbery account,' where other 'prestamos' and robberies are entered." Clark, in his deposition, supports Bartholow (except as to time) as to the alleged $600 forced loan, but there is not the slightest reference anywhere either in the letter book or the account books of the

company, now in the possession of this court, to the payment of any forced loans during Bartholow's superintendency. Everyone who reads the letter book and notes the care with which Bartholow has written down every incident must be convinced that no such events as sworn to by him ever occurred. On the contrary, the letter book shows that all his appeals to the authorities were kindly received and were generally favorably acted upon. Let me tax the patience of your honors by reading one of these appeals in full (Ex. B, 251):

HACIENDA LA ABRA SILVER MINING CO.,
Tayoltita, March 17, 1866.

SEÑOR EL ADMINISTRADOR DE RENTAS,
San Ignacio.

DEAR SIR: The bearer of this, Mr. William Scott, goes to San Ignacio under my instructions to pay the taxes on the goods I have purchased to supply my miners and laborers, which goods have been received here, on which I am informed through several sources that you or some one else holding office under the Republic of Mexico have determined to force from me as a tax upon these goods a tariff of sixty-five per centum. I can not believe that any officer of this *Republic* can be induced to perpetrate such an outrage upon a *citizen* of the *United States*, the only *Government* on the globe which *recognizes this Republic* and is giving it moral and substantial aid in her present conflict with *Maximilian* and his *European allies*. If such a tax as this is imposed upon me I desire *General Corona* to send here an officer, empowered with written authority, to take of my effects sufficient to pay it, for I shall, if anything like this sum is demanded of me, put my goods

and property under the protection of the flag of the *United States*, and from under it I intend they shall be taken. At the same time I shall offer no other resistance to any *legal* officer of the Mexican Republic than to enter my solemn protest against it and appeal to my Government at Washington; and, besides, if this large tax is collected from me, I will be thereby compelled to close up all my business here, abandon my property, and return to the United States, for this course will save more money for my partners and myself than to continue operations here any longer under such enormous taxes. No business can stand such, neither in Mexico nor in any other country in the world. My partners and myself have purchased a hacienda and mines here, for which we paid *cash* $50,000.00; are now building machinery which will cost besides $65,000.00. This large amount of machinery will be completed and operating in four months if I am not compelled to stop work on it by these large taxes and restrictions; but, as before stated, if anything like such a tax as sixty-five per centum is imposed upon my merchandize, I had better at once abandon my work, pay off and discharge miners, mechanics, and laborers, and of these I have in my employ thirty Americans and one hundred and fifty Mexicans (these latter Mexicans are wholly dependent upon me for their daily food), and leave the country until a time shall come when Americans (citizens of the United States) can find that security and protection from the Republic of Mexico which they are entitled to receive, and which the *minister plenipotentiary of the Republic of Mexico at Washington* (the capital of the United States) assured my company, before we embarked in this enterprise, we should have.

Now, I am willing and anxious to pay any just and legal internal tax that the laws of the Republic require, but as I have already paid at Mazatlan the *import duties* upon my goods to the imperial authorities who occupy that port, there is no legal right or justice in the officers of the Republic occupying the interior in demanding of me the payment again. It is the misfortune of the Republic that it does not occupy the port of Mazatlan, and certainly it is not my fault.

If Mr. Scott can make an equitable and just settlement with you for the payment of a fair and legal tax he is fully empowered by me to do so; if, on the contrary, he can not, then he is instructed by me to take a copy of this letter, which I have given him for this purpose, to General Corona and make the payment direct to him.

Your ob't servant,

TH. J. BARTHOLOW,
Superintendent.

A copy of a letter to General Corona on the same subject follows, but it will be unnecessary to read it, as will be seen from the letter to Garth of April 10, giving the result of his appeal. He writes Garth as follows (Ex. B, 255):

To give you a better idea than I could do by detailing the transaction in this letter of one of the many difficulties I have to meet and overcome, I enclose you a letter that I wrote to the collector of taxes at San Ignacio, which explains itself. The result was, instead of paying taxes to amount of three or four thousand dollars, as was demanded, we only paid about $30, and there was no necessity of troubling Gen'l Corona with the matter.

The affidavit of Pedro Echeguren, a banker and merchant of Mazatlan, before the commission is also relied upon to support Bartholow's statement as to the payment of forced loans, but an examination of his testimony shows that he had no personal knowledge of the matter and derived all his information from Bartholow. His affidavit is, however, valuable as showing the state of the country at the time. (See Echeguren's testimony, Ex. A, p. 410–411.)

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Mr. Avila, the Mexican agent before the commission, in his argument in this case, cites the testimony of Sr. Echeguren in the claim of Benj. H. Wyman, No. 911, as follows:

> That he knows and it was notorious that all the authorities respected the persons and properties of foreigners, and particularly of Americans, and he, being a foreigner, had never suffered in his property and interests other annoyances than those that are inevitable consequences of political disturbances and hazards of war, and no injuries whatsoever from international acts. (H. Ex. Doc. 103, p. 370.)

As we have said, the letter book and account book of La Abra Company fail to show that during Bartholow's management any forced loans were exacted from the company. But to anyone familiar with Spanish-American countries, so frequently disturbed by revolutionary movements, it would not seem strange nor any unusual hardship if a company situated as was La Abra should have been compelled to pay forced loans; and the fact that it was enabled to carry on its operations for more than two years in a locality subjected to unusual civil disturbances without having to pay any such character of taxation is

a testimony of the most conspicuous kind to the consideration with which this American company was treated by the authorities.

THE VALDESPINO FORCED LOAN.

This is especially apparent in the single instance of which we have any record when a demand was ever made on the company for a forced loan, in what is known as the Valdespino affair. This affair figured conspicuously before the commission and is one of the two instances in which the charges are sought to be supported by documentary evidence. Exall swears (~~Ex. A, 460~~) that—

> It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel De Lagnel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel De Lagnel, and, to the best of my recollection, the whole amount, $1,200, was required of and paid by said De Lagnel. There was a small loan, or "prestamo," previously required by Valdespino, of, I think, $500, and that was paid by contribution, and with much trouble, the company paying the largest part of it, and I recollect that some show of trying to collect from Mexicans a part of said $1,200 loan was pretended to be made and failed, and Valdespino then fell back upon the company, as being most able to pay, and completed the payment.

James Granger, in his first affidavit for the company, swears as follows (~~Ex. A, 353~~):

> Said company was also forced to pay "prestamos." A letter was received by Colonel De Lagnel, super-

intendent of said company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed "Jesus Valdespino," which came into my possession as clerk of the company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked "Exhibit Z." This letter demands $1,200 from said company for the support of his forces under his command. It is needless to say the demand was complied with.

This affidavit was made May 14, 1870. At that time Granger had in his possession the letter book which showed that the forced loan was refused and not paid. A year later, when examined on behalf of the Mexican Government, he said he knew of the letter, but did not know whether the company paid the loan or not. But in both instances he swore falsely, for he did know that it had not been paid. The whole story is told in the correspondence now in the possession of this court. The commander of the troops, Valdespino, sent a letter to Colonel De Lagnel, accompanied by one from the gefe politico or prefect. Valdespino's letter is as follows (~~Ex. A, 360~~):

EXHIBIT Z.

SAN DIMAS, *July 27, 1866.*

To Colonel J. A. DE LAGNEL.

DEAR SIR: Both Mr. Laeuz and the gefe of the partido will inform you of the commission with which I am charged, by superior orders, and the powers vested in me to procure the necessary means for the maintenance of the forces under my command;

but, informed, as I fully am, of the injury which my continuance in the district would cause to its residents, and *particularly those having large business and property*, in the maintenance of my force, I have resolved to leave immediately, as I think that it will be for the interest of your business, and upon the sole condition that the residents of the district furnish me with $1,200 for my departure. I am confident that I take this step as the least burdensome, because if I remain here I must obtain means *wherever they may be found*, but as I have before stated, my purpose is to the individual guarantees which the laws accord to the people.

I hope that you will attentively weigh my reasons, and, convinced of their soundness, you will contribute your share toward completing the contribution levied by the gefetura of the partido on your place.

I avail myself of the opportunity of offering myself as your friend and obedient servant,

JESUS VALDESPINO.

De Lagnel sent a reply to both the prefect and Valdespino. The letter to the prefect I give in full (Ex. B, 272):

[Translation.]

HACIENDA OF LA ABRA, *July 28, 1866.*

To the Gefe Politico of the San Dimas mines:

In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith.

I send you part of the articles I have and which you ask me for, hoping that they be useful and acceptable to you.

As regards the cash, I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the necessary amount to defray my many and constant expenses.

I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Col. Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mahon and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, in order that it may serve me as a voucher to the company I have the honor to represent.

In conclusion permit me to add that it is very strange to me that the total amount of the tax being $1,200, the share allotted to the two American companies should amount to half that sum, when there are in the district several residents who have considerable property.

I am, sir, your sincere servant,

J. A. DE LAGNEL.

The letter of De Lagnel to Valdespino covers the same ground. I make the following extract:

I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will.

I suppose that having contributed with what I can I may, as a matter of course, resume my work

without fearing the interruption that would be caused by the arrival of armed forces.

I am, sir, your attentive and sincere serv't,

J. A. DE LAGNEL.

In a letter to Rice, superintendent of the American Company at San Dimas, De Lagnel writes on July 31 (~~Ex. B, 273~~): P. 237

> As to the forced, voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect.
>
> You can not have failed to notice that the exact half of the whole levy was laid upon you and myself, a fact I brought to the attention of the parties interested.

The event does not appear to be of sufficient importance to be mentioned by De Lagnel in his next letter to Garth, but he deposes before this court as to the incident as follows (~~Compl. Ev., 28~~): P. 488

> Q. There is a letter in the press copy book concerning what is called a prestemo or forced loan, levied in Tayoltita by Colonel Valdispeno during your superintendency. State the circumstances of that, as far as you know.
>
> A. I received from the civil officer in San Dimas, and also at the same time from Colonel Valdispeno, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry—Liberal cavalry—destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one quarter upon us, and the other half was to be borne by the

citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, and didn't intend to give it even if I had it. I was advised to do so, or they would come there and rob the place, as it was said to be the habit.

Q. By whom were you advised?

A. I was advised by a man named Norton, who had married a Mexican wife.

Q. The same man who was your clerk?

A. Exactly. He had been in the Liberal service. He said to me, "It will be to your interest to do it; they will sack this place if you don't." I said, "I am not going to do it, for the good reason that I haven't got the money in the first place, and if I had, I wouldn't do it."

Q. What was the result?

A. I sent them a few goods—some stuff they wanted, blankets and hats. I sent them some goods, cotton goods, and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, because the mines had never turned out a dollar. They wrote me an acknowledgment and sent a receipt for the goods and courteous acknowledgments. That was the end of it.

Notwithstanding these plain facts, respondent's counsel in his brief dwells at considerable length upon this affair and would have your honors believe you should take it into serious consideration in deciding whether there were just grounds for the claimants' allegation of forcible interruption of and expulsion from their works. In his brief he says (Resp. Brief, 81):

> Judge Black, in his argument before the umpire, said of Valdespino's letter: "The glove was soft,

though the hand within was of iron. It was a very polite request by an officer who had a regiment of soldiers behind him."

Judge Black had before him the one letter of Valdespino which Granger had produced, and he made the most of it before the umpire. If the judge could have looked into the letter book then in Granger's possession, Mr. Kennedy would hardly have had the opportunity to quote him to-day, because the subject would never have been pressed upon the attention of the umpire.

THE MORA-SOTO ORDERS.

The next fact or incident in the history of the company which is presented in the claimants' testimony before the commission with sufficient definiteness to be properly examined is the alleged interference of the local authorities with the working of the mines by the company. This incident imperfectly and fraudulently presented to the commission by the claimants in their testimony probably had greater weight in procuring the award of the umpire than any other fact; and it is still insisted upon by respondent's counsel as an important element in the present suit. It is therefore necessary to examine the matter with some care. To establish the charge of interference of the authorities, four letters or orders of the Mexican officials, Mora and Soto, were introduced, being, with the exception of the Valdespino letter, the only original documentary evidence presented by the claimant to the commission. These orders were introduced as evidence in connection with the deposition of James

Granger taken at Mazatlan, May 14, 1870, and they appear in full in Exhibit A, ~~360~~. He swears (~~Ex. A, 355~~) that Exhibits V, W, and X are original papers; he identifies the body and signatures as in the handwriting, respectively, of Marcos Mora and Guadaloupe Soto, and says that he himself received them, and after showing them to Mr. Exall, filed them away, and subsequently turned them over to the attorney of said La Abra Company (Adams). As to Exhibit Y, he swears:

> It is a copy of an original order issued by said gefe politico, Marcus Mora, and received by Judge Guadaloupe Soto on the 3d day of June, 1867, and by him exhibited to said superintendent, Exall, and myself, and this copy, by request, we were allowed to take from the original. This copy is in the handwriting of Diego Flores, then in the employ of said La Abra Company, at Tayoltita.

It thus appears that the three original papers, dated, respectively, July 4, 5, and 10, 1867, are original documents, and that the one dated June 3, 1867, is a copy. Out of this fact there arose in the commission a misapprehension as to the dates, which has been perpetuated up to the date of the argument on demurrer in this court, Mr. Lines having adopted Mr. Kennedy's change of dates of the three original papers—a manifest error. It grew out of the fact that Exhibit V was a reply to Exhibit Y, which latter is dated June 3, and for that reason the date of the original was changed to June 4, which necessitated a like change in W—a change which was altogether inadmissible and illogical. If a discrepancy existed, as was manifest, it is natural to suppose it was

caused by Granger and Flores in making the copy. That such is the fact is strongly confirmed by the letter book. It contains a letter from Exall, dated July 11, in reply to the letter (X) of Mora of July 10, and in Exall's letter to Garth of July 13 we have statements which undoubtedly refer to the occurrences which gave rise to the orders in question. (Ex. B, 306–7.) He writes:

> The letters and papers sent by Sr. Molina were received at the hacienda on the 1st of the month. I had been advised by one of the members of the house of E., P. & Co. of the movements of Sr. M., of his meeting with you, etc. * * * (307). When I received your letter by Sr. M. I was working the Abra, Cristo, Luz, and Arryan—a small force in each. Seeing the decided manner in which all further aid for the present was refused and the injunction to cut down all expenses, necessitated my stopping off the whole force from the mines. As I had only a short time previous reduced the cash payment from one-third to ——— (which occasioned a stop of eight or ten days, which I was glad of, as it was so much clear gain, and a little spat with the officials, which was gotten through without much trouble), I thought it best not to stop off immediately, but prepare the miners for the change. * * * We can do better with them when they are a little hungry * * * (308). The officials are getting daily more troublesome; their demands are all foolish and very unjust, but we have to do the best we can with them and take things as quietly as possible.

These extracts unmistakably constitute the report of Exall to the New York office of the outbreak of the miners, of the interference of the local officials in their

effort to protect them against the extortion and bad treatment of the company, and of the manner in which the whole affair was settled. There was a great conflict of testimony before the commission as to this occurrence, and it would be a waste of time to attempt to sift the truth out of the mass of false swearing. But your honors have in these orders of the officials and the letter book of the company records of the occurrence written down at the time, and they make it very clear what the officials had in view and how the matter was adjusted. Exall, in his note of July 11 to the prefect of San Dimas (~~Ex. B, 303~~), shows that he regarded the fault as attaching to the company, and that a "most friendly understanding" had been reached. And in his report to Garth he could only characterize it as "a little spat with the officials, which was gotten through without much trouble;" and even when he manifests impatience with the interference of the officials, he terms their demands "all foolish and very unjust." This is not the language of a man who regarded his life or the property of his company in peril. Granger's bad faith in introducing the orders of Mora and Soto was in concealing the existence of Exall's reply to Exhibit X and the report to the New York office, which are contained in the letter book, then in his possession.

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Mr. Kennedy claims in his brief that this affair took place early in June, and that Exall must have made a report of it to Garth while he was at Mazatlan, the copy of which does not appear in the letter book. It seems that he did write a letter from Mazatlan, but there is no

evidence to show that a copy of it was placed in the letter book. While, however, there is no copy of it, we know what it contained by reference to Garth's letter of August 10, acknowledging its receipt. It is evident from Garth's letter that there was no reference in Exall's letter of June 11 to any serious difficulties with the authorities and that it did not contain an account of the occurrences attending the Mora-Soto orders.

The cause of the outbreak of the miners and these orders is made manifest in the letter book. As your honors remember, the company had established a store at the mines, out of which they expected to derive large profits. In Bartholow's second letter to Garth, March 7, 1866, he writes (~~Ex. B, 247~~):

> Our sales range from $80 to $100 per day cash, besides what we sell to our employees, which is charged on the books. The store under good management will, I think, yield a net profit of $20,000 per annum, but it requires close and constant attention, for the reason that these people buy everything of general consumption in very small quantities, usually from 3 cents to 6¼ cents at a time. I have seen women stand at the counter and make three purchases of cheese of 3 cents each; they do this under the impression that they get more in the aggregate by buying in such small quantities, yet when they come to purchase a dress, a rebozo, or shawl they will cheerfully pay the highest price if they have the money, and rarely complain of the prices asked. Our staple goods and provisions yield a profit of at least 50 per cent, and fancy dry goods from 60 to 100 per cent, and the most difficult task I have now is to keep an ample supply on hand to meet the demand.

In his last letter to Garth (April 10) Bartholow writes in very enthusiastic terms about the store (~~Ex. B, 256~~):

> Our store is doing an excellent business. Our goods and supplies pay liberal profits, and I am confident when our mill and buildings are completed and our mining and mill-work systematized as it should be, the store if kept well supplied will run the entire concern, thus reducing the cost of our labor about fifty per cent.

There are frequent references all through the letter book to the store, and it is seen that the visits of the superintendent to Mazatlan were in great measure occasioned by the necessity of purchasing supplies for the store. In De Lagnel's first letter to Garth (July 6, 1866) he says (~~Ex. B, 270~~): "The payments made formerly to workmen and others in cash are now made in cash and goods, one part of the former and two of the latter." In his next letter to Garth (August 16) he says (~~Ex. B, 275~~): "When I arrived at Tayoltita the payments were made mostly in cash. After the first month I reduced it to one-half, and the next to one-third cash, and rest in goods." And again, evidently in response to an inquiry as to why the sales at the store were not greater, he writes to Garth, January 5, 1867 (~~Ex. B, 293~~):

> As those employed by me receive two-thirds of their earnings in goods, they have no great need to purchase more. Then there are other points within striking distance which are endeavoring to attract the little trade there is, and so, between a diversity of causes, the receipts of cash are very small indeed.

These extracts from the company's own records throw much light upon the Mora-Soto orders. The letter of

Exall which I have already quoted shows that about July 1 he had discontinued the one-third cash payment, and that this caused a stoppage at the works and the "little spat with the officials." It is plain that the uprising or strike of the miners was occasioned by this action of the company, and the interference of the authorities was with a view to restoring order, and the only effective and just settlement was that which the authorities sought to bring about. It is interesting to note in this connection that the only indication of trouble which De Lagnel had with the workmen during his superintendency arose out of a somewhat similar cause. It is told in his testimony before this court (Compl. Ev., 53):

> By Mr. KENNEDY:
>
> 217. Q. What was the occasion or pretext of the armed demonstration that you described before the Senate committee?
>
> A. It was because the port of Mazatlan was beleaguered by the Liberals; the French and Imperialists had possession, and General Corona or his subordinate would permit no passage to or from the city. There was no ready money at the mines, and I could not get to Mazatlan to get the money, and I wanted to pay these people in orders—promissory notes, so to speak—for a time, until that embargo should be removed. If I could have got to the port or city of Mazatlan there would have been no trouble, because I could have got the money, as it was in the hands of the bank there.

This statement from De Lagnel and the Mora-Soto incident, of which so much has been made, show that so long as the company complied with its engagements with

its employees everything went smoothly at the mines, and that when it failed in its engagement with them there was trouble—in other words, that the same condition of things existed between the employer and employee in that remote region of Mexico as in the most civilized regions of the world.

THE IMPRISONMENT OF EXALL.

The next event which was brought to the attention of the commission to prove the averments in the memorial, as to the hostility and persecution of the company, which compelled the abandonment of the mines, was the arrest and imprisonment of the superintendent, Exall. His own testimony on this point was as follows (~~Ex. A,~~ 337):

> The civil officers of the legitimate Government of Mexico under President Juarez also harassed and annoyed us, and interfered with the continuing of the mining operations of said company. I was arrested by the order of the local magistrate or judge of Tayoltita, whose official title, as I understood, was "Juez," and thrust into prison and sentenced by him to a fine of $50 and imprisonment for two months. I had no trial, nor even an examination, except by him personally, and do not know for what I was arrested or imprisoned; but I here state positively that I had not committed any act, crime, or offense against the laws or people of Mexico, or any citizen or soldier of the same, nor against any of the authorities, local or national. I was released through the personal influence of a Mr. Granger, who had to promise payment of the said fine, no good reason ever having been given me for my arrest or release.

In his second deposition, in rebuttal, he said (~~Ex. A, 461~~):

> 18. Q. State whether or not your arrest by Judge Perez was in consequence of any misdemeanor committed by you?
>
> A. It was not; I had done no unlawful act, and none was charged against me. I told Judge Perez, politely, that if he had some business with me that I would see him in the office, and his pretended offense was all previously arranged, as I was subsequently informed, to give him a pretext for locking me up and paralyzing the works of the company. I gave him no reason or cause for arresting me.

Garth, in his deposition in this suit (~~Resp. Ev., 57~~), said Exall, on his return to New York from Mexico in 1868, told him "he was imprisoned for about two weeks." Granger, in his first deposition, taken by claimant for use of the commission, entered into a detailed statement. (See Granger's testimony, ~~Ex. A, p. 354.~~)

Granger was afterwards examined by Mexico, but the only material qualification of his former testimony was that Exall was imprisoned "at a place called Raventon, situated in the same district of Tayoltita." Another witness, whose affidavit was filed to support the charge of Exall's imprisonment, is John P. Cryder, who follows Granger's narrative in most respects, but adds to it some embellishments not given by Granger. (Ex. A, ~~374–5.~~)

Mexico introduced some evidence before the commission tending to disprove the affidavits of La Abra witnesses, but I do not deem it necessary to restate it, for the reason that Exall himself has given us a full account

of the affair, written down at the time and placed in the letter book. I refer to his letter to the prefect of San Dimas:

C. Jefe Político,
San Dimas, Durango.

Dear Sir: This morning about 11 o'c'k Sr. D. Gicanor Perez came into the store belonging to the hacienda, looked around, saluted us, and then walked into the storeroom adjoining the store, the time I was behind the counter, and seeing him in there where *no one* was ever allowed without permission, I, in as polite Spanish as I was master of, requested him to come out, and after he came out I shut the storeroom door. He then asked me if I thought he was a rogue and wanted to steal. I told him as well as I could, certainly not, and that the reason of my asking him out was that no one was ever allowed in there without permission. He then stated that he was there on official business, and wanted to see Matias (our ——), who was at the time working in the storeroom. I immediately called Matias out, and he and the ——— then went outside of the store. A few minutes afterwards he returned and talked in a very excited manner, feeling himself much insulted. I told him nothing was meant by what I had said, and he left and returned to ———.

At about 12¼ o'ck, just as our dinner bell had rung, a mozo brought an order from the judge, which I inclose. After we had eaten, Mr. Slone went up to see the judge. He had collected around his house a number of men, and in the house preparations had been made as if resistance was expected and force might be required. After getting into his room I requested Mr. Slone to ask him, as I was unable to ask him myself, what was the business he

wanted to see me on. He replied he had been grossly insulted and pushed out of the store when he was on official business. This I, of course, denied in a most emphatic manner, having acted only as before stated. I then told him that in requesting him to come out of the storeroom I had no intention of insulting him or hurting his feelings, but was simply enforcing the rules of the hacienda in not permitting anyone to go in the storeroom without permission. This he would not listen to, and persisted in saying I intended to insult him. I of course did not, from my ignorance of the language *could* not, argue the point. After some time spent in talking to this effect I asked him if he had gotten through with me, as I desired to return to the hacienda. He replied, yes, he had finished. Mr. Slone and I then left, and bid him good-by. As we reached the corridor he said he never wanted to see me in his house, except on official business. To this I replied, "Very well, sir," and turned to leave. He called me back, saying not to go; if I did he would send a force after me, and they would shoot, and insisted on my return into the house. I did so, without any remark. He then said I was his prisoner. I then requested him to know what was to be done. He said he would put me in jail until he could receive instructions from San Dimas. I remained passive, and he then gave full license to his tongue, abusing me in the most violent language. Then and several times I repeated my statement of the occurrence in the store. To this he paid no attention, and treated me with utter contempt, and persisted in his intention of putting me in jail until he could hear from S'n Dimas, and would listen to nothing that I might say. After being his prisoner for an hour, not being allowed to speak to anyone,

and being guarded, I asked him if he intended putting me in jail please to do so, as I had a headache and wished to lie down. He then gave me permission to go to the hacienda, *but* to consider myself still his prisoner, and ——— at his house whenever ordered.

My dear sir, I have before given you as minute a state of events exactly as they occurred as 'tis possible to write, and from which you will see that if I have given any cause to Dn. Nicanor to imagine himself insulted, it was done ignorantly, as nothing was further from my thoughts than insulting him or hurting his feelings in any manner, and I submit it to your judgment whether I deserve the treatment which I have been subjected to, abused and insulted, without any provocation, and have no redress left me. But for being a prisoner I would come and see you in reference to the matter, but unfortunately necessity compels me to write.

Dn. Nicanor intends writing to San Dimas, and will of course give his version of the affair. Please act on this immediately, as I don't care to be any longer under restraint than possible.

Yours, most respectfully,

CHARLES H. EXALL,
Adm'r La S. M. Co.

TAYOLTITA, *Jan'y 7, 1868.*

My learned friend, Mr. Kennedy, contends that this letter was written before the real imprisonment began, which he alleges was the next day, the 8th of January, and that the imprisonment lasted till the 11th, supporting his contention by the witnesses above cited, by a letter found on page ~~315 of the letter book,~~ and by the deposition of Mr. Sundell. But Sundell testified that

Exall told him his imprisonment lasted only "a few hours" (~~Compl. Ev., 67~~), and if any reliance is to be placed on his testimony the imprisonment could not have lasted till the 11th. The letter of Larenga (~~Ex. B, 315-6~~), because it bears date at San Dimas, January 12, would indicate that Exall was at San Dimas on that day, but it can not be concluded therefrom that he was not there between the 7th and 12th. There is, in addition to the letter to the prefect of the 7th, another strong indication that the imprisonment did not extend beyond the 7th. We have seen that Exall, in his deposition, says (Ex. A, ~~337~~): "I was released through the personal influence of a Mr. Granger, who had to promise payment of said fine." And Granger swore (~~Ex. A, 354~~): "By personal influences I brought to bear, and by securing the payment of the fine imposed upon him, I managed to get Mr. Exall released." Cryder says (Ex. A, ~~375~~): "Mr. Granger managed, with some influences unknown to me, and by securing the payment of the fine, to get Mr. Exall released." If these witnesses for claimants are to be believed, and respondent at least must accept their statements, the payment of the fine either accompanied or followed the release. The expense account of the company introduced by respondent (~~Resp. Ev., 94~~) shows that the sum of $50 was paid out on the 8th. It is entered on the book as "prestamo," which, respondent's counsel claims, was the fine imposed on Exall.

The position in the letter book of the letter to the prefect is to me a conclusive proof that with the events therein narrated the entire incident was closed. It follows the letter dated from San Dimas on the 12th, and

is itself immediately followed by a letter to Garth dated January 24. If it were true, as affirmed by claimants' witnesses, that he was shut up for days thereafter in a loathsome prison and treated with the barbarity alleged, it is incomprehensible that Exall would have allowed that narrative to stand in the letter book uncontradicted or without a note of explanation. It is, also, incredible that he would have omitted any reference to the event in his letter to Garth the same month, if the imprisonment was of the grave character given to it before the commission. It is not claimed that any steps were taken by Exall after his release by way of redress. Green, one of the claimants' witnesses, had himself a case before the commission, complaining of false imprisonment in San Dimas (No. 776), and, in rejecting his claim, the umpire said (H. Ex. Doc. 103, p. 105):

> If the judge illegally imprisoned the claimant, it was certainly in his power to appeal to a higher court, and to sue Judge Perez for false imprisonment. * * * Nothing could have been more easy for him than to seek his remedy through the courts; but it does not appear that he took any step in that direction.

GENERAL CHARGES OF HOSTILITY.

It was further sought to sustain the averments in the memorial, respecting the hostility and persecution of the company resulting in the abandonment of the property, by a number of vague and general statements of witnesses before the commission as to unfriendly declarations of Mexican officials, as to the refusal of the authorities to grant protection from outrages and redress

of grievances when applied for, and as to the failure to carry into effect the proclamations and invitations of the Mexican Government assuring foreigners investing their capital in the country of full protection. The testimony as to the unfriendly declarations of the officials is almost entirely of a hearsay character, in many instances is denied by the officials themselves, and proof of its falsity was introduced before the commission. The alleged refusal of the authorities to grant protection and redress is not sustained by a single document or other official proof. No copy of any proclamation or invitation to foreigners of the character alleged by claimants' witnesses was ever presented to the commission, and the Mexican agent before that body denied that any such document was ever published. But whatever may have been the weight of evidence before the commission on these points, this court is now in possession of proof which makes it clear that the charges preferred before the commission were false and unfounded.

The letter book alone is sufficiently convincing. I have already called attention to the account of affairs at the mines as given in Bartholow's letters, showing that in every instance, when requested, the authorities extended to him all possible protection. I need only recall the sentences in his letter to Garth of February 6, 1866 (Ex. B, 240): "Had I not succeeded in getting military protection our mill would now be lying at Mazatlan." I give one other extract not before cited. In a letter to Del Valle, March 13, 1866, he says (Ex. B, 249):

> All my machinery * * * has been received, as well as all the goods I purchased in Mazatlan.

> Considering that these effects weighed over 80 tons, and all packed up, through a country in a state of war, in less than three months, is quite good evidence of industry and energy.

It is as well an evidence of unusual protection on the part of the authorities.

During De Lagnel's superintendence there are frequent references in the letter book to the state of war then raging, with note of military and civil protection, and not a single record of official hostility. But De Lagnel, who was not called by the claimant to testify before the commission, is still living and has been examined at length in this suit. His deposition makes clear the state of affairs at the mines as to these matters. From this
P. 488 I make the following extract (~~Compl. Ev., 28~~):

> A. When I went outside I went with a party of Americans who had already established in the country, and they introduced me to the Liberals I came in contact with, and the fact that I was an American and engaged with this company satisfied all inquiries.
>
> Q. Now, did you require passes from the commandant of the Liberal forces?
>
> A. No, sir. General Bartholow had made a good impression on General Corona, who was supreme then. He had established relations with him, and they never interfered with me, save on one occasion, when they were besieging the port closely and had their lines drawn around the city. I wanted to go into a banking house to get money. I had been eight or nine days on the road, but they would not let me in. I rode to General Corona's headquarters and made an appeal to him, and he received me

well, but said it was imperative that no one should go in—that he would not let his own mother in.

Q. Did you know the Liberal officers?

A. One or two; never well; always met them kindly on the road.

Q. How did they treat you and your company?

A. Always well.

Exall's record on this subject in the letter book is in exact line with that of De Lagnel. Besides what I have already quoted from his letters, there is not a single reference showing a state of hostility on the part of the authorities. His frequent applications for prorogues were always promptly granted. The only appeal which was ever made to the courts was the suit against Soto for possession of the Guadalupe hacienda (Ex. B, 314), and the claimants' own witnesses testify it was decided in favor of the company. (~~Ex. A, 351~~ Bissell, ~~356~~ Granger.) Months after the Mora-Soto orders, to which so much importance is attached in respondent's brief, Exall writes (October 6, 1867) to Garth (~~Ex. B, 311~~): "There is no difficulty about authorities, boundaries, or anything else concerning the mines and hacienda, provided there is money in hand, and *money must be sent*."

On this subject there is an interesting piece of testimony in De Lagnel's deposition, which I will read:

200. Q. Do you know what the authorities were to whom you would have appealed in case the trouble you thought threatening had happened?

A. I can not say, and would only have known by advice. As a rule I relied upon myself for my protection, and for any further steps would have had to ask for advice.

201. Q. Did there seem to be any government of any sort prevailing there?

A. It was a wild mountain hamlet, on the mountain side, and we saw no authority—saw no exhibition of authority—from one year's end to the other.

202. Q. This man Soto, you say, was a justice of the peace?

A. I suppose he acted as the emergency arose. While I don't think he was kindly disposed to me he never harmed me in any way, except I thought (it was mere surmise) that he might have thought he would do better if he could have his own way, and have the money paid out in coin and come over his counter.

203. Q. You say that your mines were in the jurisdiction of San Dimas?

A. I think so. I don't know that the mines were in its jurisdiction, but there was a sort of authority, because when they spoke of anything like exercising authority they would refer to San Dimas. How far the authority went I don't know. I was never called upon to investigate it and never did.

This doubtless gives a true picture of the situation—"a wild mountain hamlet—no exhibition of authority from one year's end to another—as a rule I relied upon myself for protection." A state of war and its usual concomitant, a paralyzation of the civil authorities—"*inter arma silent leges.*" The letter book and contemporary history show that during the whole period of the occupancy of the mines by La Abra Company the country was in a state of war and civil commotion; that very locality and the seaport Mazatlan changed hands between the contending armies several times; when Exall was having that disappointing run of the mill, Maximilian

was making his last heroic stand at Queretaro; when Mora and Soto were exercising their feeble authority to induce the company to do justice to the starving workmen, Juarez, the legitimate president of Mexico, had not yet been able to occupy the capital of the country; and when Exall, hopeless of financial aid from New York, disappointed as to the ores, and disgusted with his experience, voluntarily took up his long journey to New York "to inquire into the intentions of the company," the local government for the first time in the history of the company was being put in a condition to administer affairs in due order and with efficiency.

Your honors, in your judicial capacity, have had occasion to look into claims arising out of a state of war. Let me present a case for your examination and decision. In the midst of our late civil war a company of London capitalists, listening to the story of some shrewd Yankee miner of rich veins of gold or silver ore in the mountain region on the borders of Carolina and Tennessee, embarked in a large mining venture in that locality. They were successful in running the blockade, and after great difficulties overcome succeeded in getting their works in operation; but during this time were harassed or interrupted in their work by the armed bands of one or the other warring faction; did not receive from the alternating civil authorities of Carolina or Tennessee, Confederate or Union, the full consideration and protection to which the subjects of a friendly nation were entitled in a well-ordered government; and finally, having spent all their capital and exhausted their credit, and

being unable to get enough silver out of the ores extracted to even pay mining expenses, they appear in this forum through their attorney and ask heavy damages against the United States, because of the harassment and interruption of their work during the late civil war, alleging the hostility or unfriendliness of the local authorities. What consideration would your honors give to such a claim?

Before passing from this subject I desire to notice an extraneous matter introduced in respondent's brief and twice cited (pp. 87 and 105) with some degree of satisfaction. I refer to a letter written by me in 1878 when minister to Mexico, in which I complain of the repeated murder of Americans, and state that so far as informed punishment had "followed in but a single case, and that when a Mexican was murdered at the same time," and wherein I refer to the sensitiveness of property to protection compared with human life. I do not feel called upon to retract or qualify anything in that letter, but I direct attention to the fact that it was written ten years after La Abra Company had passed out of existence and eleven years after the regularly constituted authorities had been restored to power in Mexico. It was written, however, before the massacre of Chinese at Rocks Springs and the lynching of Italians in New Orleans and Colorado, without any punishment by our courts. Possibly if I had been possessed of the experience of my own country in these latter days of advanced civilization I would have tempered my zeal as an American representative. However that may be, I never allowed myself to

become the champion of fraud and perjury, or to arraign the Government to which I was accredited for the murder of an American brought about by his own indiscretion and for which the authorities were in nowise responsible.

THE VALUE OF THE ORES.

The remaining averment of the memorial as to the hostile acts of the authorities to be examined is the alleged forced abandonment of the mines, which is fixed in complainants' testimony on or about March 20, 1868. But before taking this up I desire to examine the averments as to the ores of the company, which are presented in a variety of aspects. The memorial states that the "mines were of extraordinary richness;" that "they were getting out of said mines a large amount of the richest ore, and were in the act of realizing the extraordinary profit of a million dollars per annum;" that "they were compelled to abandon over a thousand tons of ore;" that "large quantities of ore * * * were taken from the company;" that "said mines were of immense richness;" that the "1,000 tons of silver ore already extracted, ~~with~~ $500,000 * * * were carried off by the Mexicans;" and "that at the time of the abandonment of said mines the company were extracting large quantities of ore, their profits would have been very great," and they "estimate their clear annual profits * * * at $1,000,000."

These averments were supported by the affidavits of a number of witnesses, and likewise denied by a number of other witnesses before the commission. The umpire

gave the company an award on this branch of the claim for $100,000. It is not my intention to test your patience by a review of the conflicting testimony before the commission, and I shall confine myself to the newly discovered evidence, to be passed upon judicially for the first time by this court, which consists of the records of the company itself, records which were, in the main, in the hands of the company in New York at the time the claim was brought, and the absence of which before the commission on this point so surprised the umpire. He said (H. Ex. Doc. 103, Forty-eighth Congress, first session, 75):

> In so well-regulated a business, as the umpire believes it really was, he can not doubt that books would have been kept in which the daily extraction of ores would have been regularly noted down and that periodical reports would have been made to the company at New York. Neither books nor reports have been produced, nor has any reason been given for their nonproduction.

The letters of the three superintendents, which I am about to cite, were undoubtedly in the possession of the New York office; the reports of two or more assays of the ores, the statements of the run of the mill, the reports as to the ores taken from the mines, and various other data throwing light on this branch of the company's operations were in New York when the claim was filed. Bartholow, in his letter to Garth of March 7, 1866, makes reference to the ores (~~Ex. B, 246~~), which I have already quoted. He alludes to the subject again in his letter of April 10 (~~Ex. B, 257~~), giving a statement of the amount extracted and the cost. As I have shown from the

extracts heretofore read to the court, Bartholow had high hopes as to the value of the ore, but he was engaged in getting the mill up from Mazatlan and putting it up, and no ores were reduced till the year after his departure, so that he was not in a position to give the New York office any reliable information as to the value of the ore. But his successor, De Lagnel, furnished the company with valuable information. Soon after he arrived at the mines he made an assay of the ores and sent it in a letter to Garth, but as a copy of that letter is not in the letter book, we can only ascertain something of its results from De Lagnel's testimony. In his deposition he says (Compl. Ev., 24, 26):

P 484, 486

Q. And from these assays I understand you to say it appeared that the value of the ores was diminishing up to the time you left the property?

A. The first of those assays was made very soon after I went there—soon after General Bartholow left—and that assay was very satisfactory, so as to give us high hopes. The final assay was after we had commenced working the mill. There were two different ores. The first assay was all from La Luz mine, and that gave very satisfactory results, but I am not able to tell you what they were. That letter book probably would tell you, for I must have written to Mr. Garth about it. Then another interval ensued, and I made no assay until we got the mill to working and in use. We got the average; we didn't get the result of one little valuable piece, but we got the general average of the run—10 tons, 20 tons—and that assay, while it was satisfactory, still it was nothing comparable with the other.

(P. 26:) Q. What was the result of the reduction made by you?

P 484 6

A. That was not as satisfactory as the first one.

Q. No; I am not speaking of the assays, but of the reduction—the net result of the reduction of the ore. I mean the proceeds—what came out of the ore reduced by you?

A. The proceeds of that only run that I had anything to do with—the first run of the new mill—was a plate of silver, which was sent to New York. I can not tell you what it was worth, for I don't know; I have no idea; the value is stated in the printed affidavits; it is in Mr. Garth's statement.

* * * * *

Q. Do you remember about how it compared with the first assay?

A. It was vastly less. The first assay was such as to elate me. I went back perfectly satisfied.

As to the first of these assays, we have a reference in the letter book which explains itself (~~Ex. B, 287~~): P. 251

> As to the circumstance mentioned in your letter that certain parties had stated that the specimen ore had been "salted" for my especial benefit and deception, I can only refer you to the mention made of it in one of my letters—I forget which—but that it was done *purposely* is more than I am prepared to say.
>
> If I understand the term as used by miners, the facts are not as stated. It is, however, true that, though I requested to have the second-class ore of the Luz mine crushed for assay, specimens were taken from the first-class pile and prepared for my use, but I can not say that it was designedly done.

I have examined De Lagnel's letters to Garth with some care, and I have extracted all references which

throw any direct light upon the value of the ores. (Ex. B, 274–5.) Letter of August 16, 1866:

> The ore on hand has been overstated, unintentionally, a fact which I found out on making an examination of the books.
>
> I have had the large pile of second-class ore, about which much doubt had arisen, cleaned, and the amount of clean from the rock, as declared to be the expert Limpiador, is very small.
>
> The ore cleaned from it, however, is very good, and the other pile of first-class metal is not only better in quality, but, in as far as has yet been made manifest, but little waste metal.
>
> Besides these there is a third pile of almost equal amount to either of the others from the El Cristo.
>
> The result from La Luz not corresponding with the outlay, I reduced the force there, working in one place where the metal justified, and also a crosscut to strike the true vein, which has been left to the right.

Letter of September 7, 1866 (Ex. B, 280):

> In reference to the mines, I have to inform you that we are working in the La Luz, El Cristo, and the Arrallon with the same force as before. The first of these mines has not so far answered expectations, it yielding but comparatively little paying ore, requiring great labor and expense to get it out. The better vein in the Cancero or Crosscut was reached in my absence and promises well. The Cristo so far gives better promise than the others, the metal abundant and good, showing largely and well in the vein, and lowest tunnel now being driven to connect with a shaft for draining and clearing the mine.

The work on the Arrallon is too recent to expect much return as yet, though the miner in charge expresses the most lively expectations. He knows the mine and takes great interest and pride in the prosecution of the work, and it having been attempted partly because of this knowledge of its worth and capacity.

As yet the yield of ore from the mines does not fill the measure of our needs for the mills, but I reduced the working force (it being costly) in June for the sake of keeping down expenses until the mill-work should be complete or nearly so. I deemed it best to do so in view of the accumulation of ore, now heavy, though at the same time I did not know how large a part of it was worthless.

P. 248 Letter of October 8, 1866 (~~Ex. B, 284~~):

The La Luz mine proving unremunerative, and the small yield of ore being wholly rebellious, I transferred the force to the Cristo, in which the metal has increased in quantity and quality. It shows gold largely and promises well. The mine being not so well opened as the other, being newer, requires attention now, as it is, or appears to be, the mine that will be looked to to supply the mills in great part.

I doubt whether your expectations will be ever realized respecting the looked-for yield of metal from the mines, though sufficient may be had to repay well, I trust.

P. 252 Letter of November 17, 1866 (~~Ex. B, 288~~):

As already stated, the ore has been and is being repicked, and though a large quantity is pronounced without value, I do not accept it as gospel truth, but will satisfy myself of the fact by trial.

Letter of December 31, 1866 (Ex. B, 293):

> The stock of ore is large and, I believe, good, though that remains to be seen * * * (294). The prospect from the mines is not as good as formerly, though they vary so constantly that I have ceased to permit myself to be readily elated or depressed by their condition.

These extracts would hardly justify the averment of the memorial that the company was about to realize a clear profit of $1,000,000 a year out of these ores. It appears that De Lagnel remained at the mines long enough to get a run of the mill, at which time the second assay was made (p. 24), and he started to New York with the result—a lump of silver worth $250 or $300. Just what the yield was can not in the absence of the written report be determined, but the general result is made manifest from the letter book and De Lagnel's deposition. The latter, after having been five days before the Committee of Foreign Relations of the Senate, examined and cross-examined by the committee and attorneys, had become somewhat guarded as to his answers, but in giving his deposition in this suit he said (Compl. Ev., 27):

> Q. What did you report to Mr. Garth as to the prospects of the enterprise from the experience you had at the mines?
>
> A. I can't tell what I said in the precise terms I told him. I told him after this experiment what the result had been. What I said I could not tell you, whether it was $10, $15, or $20 a ton. I was merely going to say it disappointed us, because it fell far short of what we expected, and Mr. Garth, when I told him, was disappointed. He had very exaggerated ideas in regard to it.

In his testimony before the Senate committee as to this incident he said (Senate R., 64):

> He (Garth) expressed the greatest regret and disappointment. He had evidently had the greatest faith in the presence of great wealth in the mines. * * * He seemed to be staggered and could not understand how it was that everybody could have been wrong after he had been told this and that, and only found it out at the last moment.

But it is not necessary to resort to the fallible testimony of living witnesses to determine the tenor of De Lagnel's report to Garth, for we have the latter's record of it, written down at the time of its occurrence. In his letter to Exall of May 30, 1867, Garth writes (Ex. B, 319):

> Since my last letter Colonel De Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results. It seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. Mr. De Lagnel expected that Mr. Sundel, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver. If, however, the ores are indeed worthless, I don't see that any process of working will be of any avail, and have the worst fears that our enterprise will, after all, be fruitless of good. In regard to the working of the ore, I would advise that you don't waste it by running it through

the mill when you find that the yield is not satisfactory. I would suggest that you run, say, 2 to 3 tons of metal through the mill and see what the results are by the pan process, and then take a like amount of same sort of metal and crush it and grind as fine as possible in the pans, and then take it to the "patio" and beneficiate it and carefully compare the results of the trials; this is what I urged long ago, and think it well to do at once. I would advise that very frequent assays be made of the ores as raised out of the mines, and take out nothing that will not certainly be rich enough to pay well for working.

In his next letter, June 10, he recurs to the same subject, as follows (Ex. B, ~~320~~): "The account that Colonel De L. gave of the quality of the ores on hand was most unexpected and a fearful blow to our hopes." P. 284

I now proceed to give the reports which Exall sent to the New York office respecting the ores. In his first letter to Garth after De Lagnel's departure, May 6, 1867, he writes (~~Ex. B, 301~~): P. 265

Yours of the 24th April was received some days previous to the departure of Colonel De L., who will no doubt reach New York some time prior to the reception of this. Colonel De Lagnel will, of course, give you a full and detailed account of affairs as he left them, making it useless for me to make any further mention of them.

Since his leaving I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Cristo; no improvement in the metal; a light force in the La Luz; the metal about the same. The La Abra, which we started on a month or two since, and

which should have been worked long ago, is daily improving, and I am in hopes will yet give some returns. Mr. Cullins seems quite sanguine in reference to it.

Colonel De Lagnel will give you an account of the mill and its work, which did not exceed our expectations.

The next letter is dated May 17. He says (~~Ex. B, 302~~): P. 266

> A day previous to my leaving Tayoltita, I spent a day at the mines. While at the La Abra I picked up two or three pieces of ore, which was then being taken out. Made no selection. The evening before leaving the hacienda for this port, I assayed the several pieces. The assay was *better* than previous assays of any ore on the patio, giving me $378 in silver and a large percentage in gold. It being very late in the day before I got through melting down, was unable to get an accurate gold value.
>
> The labor from which this ore was taken is improving and the vein widening ever since it was first started on. In my next I can give you a more correct idea of the La Abra metal, as by that time the different labores, which are now being worked, will have undergone a better test.

Following this is Exall's letter to Garth of July 13 (~~Ex. B, 306–7~~). He writes: P.P. 270-271

> As Colonel De L. had arrived, and of course given you a minute and detailed account of affairs here, I can't say that the contents of your letter surprised me much.
>
> * * * * *
>
> (~~P. 307~~.) I have succeeded in getting four miners to work by the cargo. They are working P. 271

in the Arryan, and getting out some good metal. I hope to be able to keep them there; by doing so it will secure the mine in every way. Four miners is all I had there before. Mr. Cullins thinks that in a short time he will be able to get more men at work in the other mines. We can do better with them when they are a little hungry.

* * * * *

I hope to be able to get along for a time at least without assistance, but if it can be gotten I would like to know, for fear I will not be able to keep things with what little I have or may be able to get from the ore.

The next letter from Exall is one of unusual importance, because it furnishes the only detailed statement of the reduction of the ores and the amount and value of the precious metal obtained therefrom which has ever been produced during this long and tedious controversy. The letter is almost exclusively devoted to the ores and the run of the mill. It bears date August 5, 1867 (~~Ex. B, 308-9~~):

The mill is now running on the same ore as I last worked. This run will finish it, and what ore to work then I know not. There is, of course, some little good ore on the great heaps on the patio, but it will have to be closely assorted, and the greater portion requires roasting, which is a slow operation and costly. I will at any rate do my best. I am now working 23 men by cargo; pay them not over $1 per week in cash. *I must* give them some little money. These are working in the Arryan and on the dump of the Rosesio. The Cristo is now idle; also La Luz and Abra. I can get no metal from them which will pay.

> The Cristo and La Luz, which have been worked for over a year, I am privileged to stop for four months. The Abra I must work; will put in some men; see what can be found. * * * The ore which is now being gotten out will average pr. assays about $75 per ton, but it comes in small quantities. * * * I can't see very far ahead in money matters; can count on nothing positive from the ores now on hand.

Attached to and immediately following the letter is the detailed statement of the run of the mill, as follows:

Statement of run of mill from 27 May to 13 July, inclusive.

Amount of rock crushed, 89 tons 1,676 lbs., producing 131 marcos 5 oz. refined silver, yielding at mint	$1,672.29	
Less mint exps	146.47	
		$1,525.82
Cost of chemicals	665.81	
labor	380.54	
wood, 95 varas, 62½	59.38	
		1,105.73
		420.09

From these figures it results that the yield of silver per ton was $18.78, and the net amount received by the company, after paying the cost of reduction, was $4.72, thus making the cost of reduction $14.06 per ton. But we know from the reports of Bartholow (~~Ex. B, 257~~) and De Lagnel (~~B, 264~~) that the cost of taking the ore from the mines was $15 per ton, from which, if we deduct the net yield of silver from the reduction ($4.72), we have a loss to the company on every ton of ore reduced of $10.28. Well might Garth, the treasurer and managing director in New York, exclaim, "If it cost more

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than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned."

The three letters of Exall above quoted are acknowledged by Garth, and from them we know accurately the effect they produced in New York. Following quickly after the verbal report of affairs made by De Lagnel, they fully satisfied the directors that the enterprise was a hopeless failure. In his letter of July 10, 1867, Garth writes (~~Ex. B, 320-1~~):

> We have since received your letters of the 6th May, from the mines, and 17th May, from Mazatlan. We are also in receipt of the sample of bullion sent at same time by express, the value of which is not yet ascertained, having not yet been able to get it from the assay office, but hope to do so to-morrow. I fear, however, that it is worth but little more than what it cost to get it from the custom-house to Mazatlan and the expenses on it here. I am glad to hear that you are taking out *rich* metal, and hope it will turn out *valuable*. It seems almost incredible that all parties should have been so mistaken in the value of the ore now on the "patio," and I don't see how it is that Mr. Cullins and Mr. Sloan, old and experienced miners as they are, as well as the old Mexican miners, should have been so deceived as to the value of the ore. If it so much resembles rich metal, I don't see how you can tell the good from the worthless except by actual fire assays. You should make these very often, and not go on and get out large quantities of worthless ore at great expense, thinking all the time it was rich metal. You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off

the debts and to sustain you in current expenses, which you should cut down to the lowest possible point. I can but think that in the vast quantities of ores now on the grounds of the hacienda there must be a considerable am'nt of rich metal, and which you should beneficiate as soon as possible, taking care not to throw away or waste any that would pay to work. Of course you keep an accurate account of the cost, not only of raising and transporting the ore to the mill, but of the cost of crushing it and converting into coin or bullion; and, as it is a matter of simple calculation, you can soon see if it will pay or if it is a losing business. If it costs more than it comes to, the sooner we find it out the better, and the sooner we stop the better for all parties concerned. I have heretofore called your attention to this point, and wish you to give careful attention to it, and would request that you furnish us such full and detailed statements on this point that we can see for ourselves. Give us the full particulars of expenses, am't of ore raised and its value, and the results after beneficiating, etc. Be careful about leaks and expenses, cut off all that is possible, and watch very closely every department with that view.

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Garth to Exall, August 10 (~~Ex. B, 321–2~~):

I wrote you briefly on the 20th ultimo, and since have your favor of 11th June from Mazatlan. Your letter by private hand had reached me some time previously.

We observe with deep regret and disappointment that you are making but little progress in beneficiating the ores now on the "patio," and that the yield had not improved. This is a severe blow to the enterprise, as we had expected long before this

time that you would not only be in position to sustain yourself, but to remit us enough to pay off the large indebtedness here.

Garth to Exall, October 10, 1867 (~~Ex. B, 322~~):

> Since ours of 30th September, we have yours of 5th August from Mazatlan and note contents. We are deeply pained to find that you are not well, and that, and are still without favorable results in the enterprise from which we all had such high hopes of success. I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted.

This was the last word of the company from New York, and naturally so. The bankrupt concern had no money or credit, and the ores at the mines were worthless. There was nothing to be said further than was said in this last letter.

As requested in Garth's letter of August 10, Exall faithfully executes his instructions as to sending "complete accounts, * * * and also your [his] opinion in full of the prospects of the mines, value of the ores, cost of raising and working, with yield of same." In his letter of October 6 (~~Ex. B, 310~~) he says: "By last steamer I sent you full statement of business of hacienda—the runnings, returns, and expenses of the mill, account of ores, etc." As to the ores and prospects, he writes:

> I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. * * * I have exhausted all

the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz, on the patio, won't pay to throw it in the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparas are not now granted, and mines are to be held only by working.

I am compelled to keep men in mines which yield nothing, merely to hold them. This I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected.

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Exall to Garth (Ex. B, 312):

Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men which are now at work in them. This I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement.

Exall devotes the greater part of the next letter, December 18, to urging that money be sent to save the property, a portion of which I have already read. As to the mines, he says (Ex. B, 313): "I am doing nothing at the mines, and have only one person left with me."

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His letter of January 24, 1868, is Exall's last written word to Garth. He says (Ex. B, 317): "In previous letters I have given you full and detailed accounts of affairs here, and such frequent repetitions I find useless, and I will simply state that I am doing nothing whatever at the mines, and can not until I receive money to operate with." This, it will be remembered, is the letter in which

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he notifies Garth—"If, by next steamer, I receive no assistance from you, I intend leaving for the East." And we shall see how he carried out his resolution.

There is only one other fact on the subject of the value of the ores which I wish to bring to your honors' attention. My industrious friend, the respondents' counsel, has ransacked the pile of account books introduced in this suit, and the net result of this investigation is that he finds four items, and only four, which would seem to have been the silver product of the mill from the time it was put in operation up to the departure of Exall in February, 1868, a period of ten months. These items are, respectively (Resp. Ev., 96), $1,356, $1,525, $923.16, and $760.42. If we concede that the piece of silver that De Lagnel sent to New York was worth $300, probably an extravagant estimate, we reach the conclusion that the total yield of these ores, alleged in the memorial to be of "extraordinary richness," during the whole existence of the company was $4,864.58. I think your honors will agree with me that I have made it clear from the company's own records, written by its own agents, that the ores taken from the mines were absolutely worthless, because the cost of the extraction and reduction of the ores was much more than the little silver that was in them; and that no amount of affidavits of discredited and perjured witnesses can change that fact. It has also been shown that the treasurer and managing director in New York was fully informed of the worthless character of the ores, and was in possession of detailed reports of the business operations at the mines. In the light of

these facts, your honors now see how absolutely false and fraudulent are the sworn averments of the company as to the richness of the ores, and that at the time of their forcible expulsion they "were in the act of realizing the extraordinary profit of a million dollars per annum."

In view, also, of these facts it seems a work of supererogation to examine the absurd charge in the memorial that "large quantities of ore, taken out of the mines, were taken from the company, the employees of the company being deterred by threats from resisting such spoliation," and, notwithstanding this alleged fact, the astonishing averment is made that there were a thousand tons of rich ore extracted which the company had to leave at the time of the abandonment, which were carried off afterwards by the Mexicans and lost to the company. There was no motive to steal or carry away ores that were absolutely worthless, and no number of ex parte affidavits can convince this court that any such improbable acts were committed. It is proved by a number of witnesses that the ores abandoned by the company remained as they were left for many years, because, as Exall wrote Garth, it would not "pay to throw it in the river;" and it is an admitted fact that the abandoned mines have been open to denouncement, since left by the company, by any person who chose to work them, and that they have been so worked by various parties, and well-informed witnesses testify that these operations have resulted in loss. It is now apparent that had the company laid before the commission the papers respecting the character of the ores in their possession when the claim was filed, and the

absence of which Sir Edward Thornton so severely criticised, so far from an award being made for $100,000 on account of ores, the whole claim would have been discredited and rejected.

THE TESTIMONY OF SUNDELL.

I come now in chronological order to the averment in the memorial respecting the final forced abandonment of the mines. Before taking this up for examination I desire, however, to notice the earnest effort which has been made in respondent's brief to discredit one of the witnesses introduced in this suit by the Government, Frederick Sundell. Twenty-two pages are devoted to this attempt, and in no part of the brief does the acknowledged skill of my learned friend more conspicuously manifest itself. And at this point I can not refrain from expressing my admiration for his unflagging devotion to his client's cause. In the years gone by which have marked the history of this now famous case, a score and more of distinguished advocates have appeared for the claimants, embracing in their number ex-Cabinet officers, ex-diplomats, ex-Senators and Congressmen, and the bar of the whole country almost has contributed of its ablest champions. Some of these are dead, but many of them are yet living, but in the final scene he only has the persistency to continue the contest. And he does not mistake his client's needs when he seeks to affect Sundell's testimony. It is by no means essential to the Government, but if it is accepted it completely overthrows all the important averments of the memorial and establishes the fraud and perjury.

Frederick Sundell's deposition begins on page 57 of complainants' evidence. He was a native of Sweden, engaged as an assayer by the Durango Mining Company, an American enterprise at San Dimas, near to Tayoltita. He had received a scientific education before coming to Mexico, having spent three years in the mining school of Sweden. So far as appears from the records in this case he was the only person in that region who had received a scientific mining education. In this connection it is of interest to make an extract from Garth's letter to Exall of May 30, written after De Lagnel's return. He says (Ex. B, 319):

> Mr. De Lagnel expected that Mr. Sundell, of St. Dimas, would come to your aid soon after he left, and as this gentleman was said to be a practical chemist and metallurgist, he hoped some means would be discovered to get at the silver.

Sundell was in the employ of his company and was at San Dimas during the whole period of La Abra Company's history in Mexico—that is, from 1865 to 1868—and resided in Mexico ten years, with an absence of two years in 1869 and 1870, and temporarily absent in 1872. For some time before giving his deposition he had resided in California. No attempt was made to impeach his character and no motive is shown why he should not testify truthfully. I do not propose to follow Mr. Kennedy through all the points of his assault upon Sundell's credibility, but will give such attention to them as may be necessary to show the character of the assault. He cites Sundell's statement that the distance from San Dimas to Tayoltita was "about 4 or 5 miles," which, on

cross-examination, he said he had not mistaken for leagues. He said he meant "in a more or less straight line," as he had surveyed it for a telegraph line. But Mr. Kennedy says other witnesses agree that the distance was 4 or 5 leagues; that Sundell himself says it was two or three hours' ride, and his assertion that one had to climb a mountain 3,000 feet and go down 4,000 feet is held up to ridicule. Now, if my learned friend was as experienced in mountain travel as he is in dissecting evidence, he would not have made this point. It is true one or more witnesses have fixed the distance at 4 to 5 leagues. But De Lagnel has testified (C. E., 52): "They (in Mexico) do not measure distance by miles; they measure it by hours or days that it takes a mule to go from point to point." One who has traveled in the Sierra Madre may well understand how San Dimas might not be geographically more than 5 miles from Tayoltita and yet one be occupied two or three hours in the journey and traverse even 4 or 5 leagues.

Another evidence of Sundell's unreliability is cited in his statement that there never was any mining board in existence at San Dimas, and that a mine could be abandoned at that time from six months to a year. (Resp. brief, 33–4.) To show that Sundell was in error, the fact is cited that Granger and Torres were put in possession of a mine in 1871 by the mining board, and a quotation from alleged Mexican laws is made to prove that the abandonment or suspension of work can only continue for *four months*. In order to understand just what Sundell's declarations were, his testimony should be

read. He was evidently speaking of the condition of things in 1866 and the period when they "had no government," and not of 1871, when the Republican government had restored the regular reign of law. Sundell is sustained in his statements by the letter book. On page 264 is found a letter from De Lagnel, addressed to J. M. Gurrola, who is described by him on page 291 as municipal alcalde, the subprefect, the term used by Sundell. De Lagnel's letter to the prefect is "to ask for an extension of six months." In his letter to Garth of August 16, 1866 (~~p. 275~~), he says, "all the mines except La Luz and El Cristo were under prorogue till January next." It thus appears that Mr. Kennedy's law was not in force in Colonel De Lagnel's day in Mexico. The foregoing are sufficient to illustrate the manner in which Mr. Kennedy would break down Sundell as a witness. I shall have occasion to recur to the subject, but for the present I have said enough on this point.

THE FORCED ABANDONMENT OF THE MINES.

I come now to the subject of Exall's forcible expulsion from and abandonment of the mines. On this point, as on others, the memorial is very vague. It avers that "they were compelled to abandon their said mines * * * by reason of unfriendly and illegal acts of the Mexican officials;" and again, "It became impossible for the company to work the mines, and the same were abandoned as aforesaid," and "said enforced abandonment * * * utterly ruined said company." The umpire says: "The conduct of the authorities was such * * *

that for this reason, as well as from the well-grounded fear that their lives were in danger, they resolved to abandon the enterprise;" and he fixes "the period of the forced abandonment of the mines about March 20, 1868." (H. Ex. Doc. 103, pp. 73, 75.) Evidently the language of the umpire, in his findings of facts, is based upon the evidence, and not upon the vague averments of the memorial.

Exall is the only witness before the commission who states the circumstances in any detail of the alleged forced abandonment. In his first affidavit he says (Ex. A, 337): P. 31

> By reason of these facts it was very difficult to keep men there at work, and the prosecution of the work was greatly hindered and delayed, and it finally became utterly impossible to continue the mining operations of the company, and I was compelled, with my men, to give up the same entirely, and to abandon the mines and all the mining implements and property of the company to save our lives.

In his second affidavit, in rebuttal, he swears (Ex. A, 461, 2, 4): P. 153, 156, 158

> All the mules of the company, except those which had been captured by the military on the road, and stolen from the hacienda, and except the saddle mules upon which some American employees and myself escaped to Mazatlan, and the one ridden by my servant, were abandoned at the hacienda, with all the other property of the company. * * * (P. 462): When those works were completed, and we were ready to realize, the facts were widely circulated by Mexicans, and I was soon thereafter notified by said prefect, Olvera, that the company

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would be no longer tolerated there, and that he could not protect the company if I attempted to remain, or if the work should continue, and he advised me to go quickly, to avoid personal violence, which I did do, believing that he knew the plans, and the determination of the people and the authorities to drive us out, in some way; and the manner of doing it being strongly hinted at in his official warning, I left and abandoned everything the next day, or night. * * * (P. 463): They might have told, if they would, the reason of my sudden departure and abandonment of the company's interests and property there, as I know some of said witnesses accelerated my departure by breaking in the doors of the hacienda, and by the intention of violence if not of murder.

Granger, in his affidavit for the claimant, swore that the company were forced to abandon the mines in March, 1868 (Ex. A, 353), but as he gave affidavits directly to the contrary to the Mexican Government, his testimony is not worth considering. The only other witness, who claimed to know the facts of his own knowledge, was John Cole, the veracious individual styled in respondent's brief "an unimpeached and unimpeachable witness" (p. 139). He says (Ex. A, 362):

> Deponent further says that he is personally cognizant of the fact that Charles H. Exall, the last superintendent of the said "La Abra Silver Mining Company," was driven away from their mines, together with his American employees, and was compelled to abandon the same by the influence and connivance of the authorities of the district of San Dimas, and by the conduct of the troops of the Liberal Government of Mexico, acting under President Juarez.

The affidavits of a number of other witnesses were presented by claimant to the commission, such as Smith, Bissell, Gamboa, and Chavarria, supporting the statements of Exall and Cole, but they show upon their face that they were all based upon hearsay evidence, and would not be considered in any court of justice.

Mexico introduced the deposition of a number of residents of the locality to the effect that no such expulsion ever occurred. I quote only the statement of Ygnacio Manjarrez, one of the owners from whom La Abra Company purchased the mines. He swears (~~Ex. A, 127~~): R/21

> The Americans abandoned their works because they could not make them produce silver, and not because the Mexicans run them off, for they enjoyed all necessary security in a higher degree than the Mexicans themselves.

But the testimony of resident Mexicans is not necessary to establish the utter falsity of the statements of Exall and the other witnesses whose affidavits were filed by claimants before the commission to support their memorial. We need only to resort again to the company's own written record of the event. After having shown, as I have, the bankrupt condition of the company and the worthless character of the ores the motive and the necessity for the abandonment of the mines doubtless become apparent to the court, and but for the persistency with which the respondent's brief clings to the story of Exall's flight and its alleged cause there would be no occasion to pursue the subject further. Regretting the necessity which requires me to ask for your patience, I must return to the letter book. I do

not propose to go over, except in a few instances, those portions of the letters of Exall and Garth already quoted, but mainly to cite portions not yet read. After the run of the mill, whose details were communicated to Garth in his letter of August 5, Exall lost all hope of getting any silver of consequence out of the ores to keep up the company's operations, and in the very next letter begins his appeals to the company to send money to hold the mines. In this letter, October 6, he writes (Ex. B, 310): "You must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off the debts of the concern;" and this he repeats in a variety of urgent expressions in the letter, closing with this statement: "I hope before this reaches you that some steps will have been taken to procure means to operate with." The same month he applies to the authorities for "an amparo for six months on the mines" (naming three of them), giving as a reason that he is obliged to stop work in them "till he can receive instructions from the company concerning the way of resuming the works and the necessary funds therefor." (Ex. B, 311.) The next letter, November 17, makes the necessity for money from New York and the danger without it of losing the property its exclusive topic. That of December 18 is to the same effect, and from the following extract he evidently was contemplating the step announced in the next letter (Ex. B, 313):

> My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a

> very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly, and consider my circumstances, and believe I am doing the best for your interests.

Then follows the next and last letter written by Exall to the New York office. In it he says, January 24, 1868 (~~Ex. B, 317~~):

> What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I shall go via San Francisco; will from there telegraph you what further steps I shall take.

Sundell has testified before this court in respect to Exall's announced intention to leave, as stated in the foregoing letter. I read his testimony on this point (~~Compl. Ev., 61–2~~):

(Read from question 71 to 92.)

His testimony in 1877, referred to, was as follows (Ex. B, 339):

> Mr. Reed [Rice], superintendent of the Durango Mining Company, left Durango in January of 1868, and deponent remembers that Mr. Exall came to Mr. Reed [Rice] and told him how sorry he was not to accompany him in his trip, but he was in hopes of following him in the next steamer, as he had to go to New York to consult with the company. Exall said this in public, and did not make a secret of his intended trip.

Mr. Kennedy attacks Sundell's deposition on this point; first, because he could not remember in 1894 the exact

statement of Exall to which he had testified seventeen years before, and second, because of his error in saying Rice left in January, 1868, when it is presumed that he did not leave till two or three months later. As to the first point I am willing to let Sundell's testimony speak for itself. To prove that Sundell was mistaken in his statement that Rice left in January the testimony is quoted of the president of the company of which Rice and Sundell were employees. In this he states (Resp. Ev., ~~92~~) that Rice resigned in 1867, when his successor was appointed, and did intend to leave about the time named by Sundell, "but for certain reasons remained over." Sundell was testifying as to events which happened twenty-six years before, and such a mistake was a natural one, and does not necessarily impair his testimony, especially when on the essential point, as to Exall's intentions, he is so fully sustained by Exall's letter written at the time. While on this subject I notice one other assault on Sundell's testimony and then dismiss it. Respondent's brief cites Sundell's statement that Martin, the superintendent who succeeded Rice, "arrived at San Dimas about October, 1867," but, says the brief (p. 42), Martin did not arrive "until the fall of 1868," and cites without quoting Exhibit A, page ~~467.~~ Turning to that reference it will be seen that Martin was not asked when he arrived in San Dimas, but the following question:

> Q. 2. Where were you residing, temporarily, from about September, 1868, to October, 1870?
>
> A. In the district of San Dimas, in the State of Durango, Republic of Mexico.

Such use of evidence will hardly break down an otherwise credible witness. The president of the company, as we have seen, has testified that Martin was appointed in 1867, and that statement certainly tends to support Sundell.

We return now to the letter book. I do not deem it necessary to quote more at length from Garth's letters to Exall. It has been seen that he had given Exall repeated advice that the company was bankrupt, that no more money could be expected from New York, and that he must depend upon his own resources. In his letter of August 10 he writes (~~Ex. B, 322~~): "You must manage to get along with what resources you have, as we can not give you any aid from here;" and in that of October 10, the last (~~Ex. B, 322~~), "It is not possible for us to direct any particular course for you." Garth thinks he did write letters after October 10, but his recollection is evidently of little value. In answer to Mr. Maury's question, he said (~~Compl. Ev., 81~~): "I don't remember. I don't know. I think I did." But under the persuasive influence of Mr. Kennedy's personality, later in the examination, he said (~~Compl. Ev., 85~~): "I have no doubt that I did." But there is evidence in the letter book tending to show that the one of October 10 was his last. Exall, in his letter of December 18 (~~Ex. B, 313~~), acknowledges the receipt of the letter of October 10. Five weeks later, January 24, he writes Garth (~~Ex. B, 317~~): "I came down to meet steamer from San Francisco in hopes of receiving letters from you; I received none." But notwithstanding this failure he waited on

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for another month longer, and then, being without the so long-desired relief, he places in the letter book a copy of his power of attorney to Granger, in some respects the most important document in this case (~~Ex. B, 317~~):

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TAYOLTITA, *Feb'y 26, 1868.*

MR. JAMES GRANGER.

SIR: As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York, to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of La Abra S. M. Co., together with its property.

You are invested hereby with all power confided to me, of course, acting in all your transactions with an eye to the interests of the company.

This will, to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf.

Very respectfully,

CHARLES H. EXALL,
Adm'r La Abra S. M. Co.

If Granger and Exall were in a conspiracy to deceive the company, as Exall swears in his affidavit of 1878, why should he have written this letter, and, if given to Granger, why was it copied in the letter book? There is no reason to question the truthfulness of this, Exall's last official act. There could be no motive to give Granger, a party to the alleged conspiracy, a false statement. It is in harmony with the preceding letters, and utterly inconsistent with the Exall affidavit of 1878.

Exall left the mines on or about the date given to his power of attorney to Granger, February 26, 1868, and

not March 20, 1868, as stated by claimants' witnesses. In his letters to Granger this date can be fixed with approximate accuracy; and from these letters his motive for and object in going are made apparent, and they are utterly inconsistent with the theory upon which the whole claim was founded, to wit, that the company was forced to abandon the mines because of the hostility of the Mexican authorities, and because the lives of Exall and his associate employees were in danger. I read extracts from those letters. (See letters of Exall to Granger, ~~Ex. B, 322–326.~~) P. P. 286–2

These letters show that Granger was in peaceable possession of the mines, books, and property of the company when Exall left, and that the latter expected to so find Granger in possession on his return. There is other abundant and reliable evidence on this point. From the letter book it appears that he was in possession August 12, 1868, and in response to a call from the tax collector he asks him "to wait until the month of November, at which time said superintendent (Exall) is to come." P. 282 (Ex. B, ~~318.~~) From a document introduced before the commission, it is shown that Granger, for the company, extended Exall's lease to Soto for the Guadalupe hacienda on August 7, 1868. (~~Ex. A, 438.~~) P. 132 Extracts from the account books of the company, introduced in this court as evidence, show that up to April 30 Granger was in charge of the store and disposing of the stock. Sundell, in his deposition, says that Granger remained at Tayoltita immediately and for some time after Exall left, living in the company's house. (Compl. Ev., 68.). Torres, who

is a witness before this court, described the condition of things after Exall's departure in such a picturesque manner that I can not refrain from quoting (~~Compl. Ev., 94–5~~):

116. Q. Do you know how long Granger remained at Tayoltita after El Mudo left?

A. Nearly a year.

117. Q. Where did he go then?

A. He went to San Dimas.

118. Q. Did you see him often during the year he remained in Tayoltita after El Mudo left?

A. I used to see him at all times.

119. Q. What was he doing in Tayoltita?

A. Sitting down eating—enjoying himself—waiting for the company to come there with funds.

120. Q. Was there any work going on in the mines or the hacienda under Granger?

A. When Mr. Granger was there all operations ceased. He was taking care of the hacienda; he had been given charge of the hacienda by El Mudo. He was always waiting for funds, and funds were never sent to him.

121. Q. What did he do with the property of the company?

A. Sold small portions of the property that was there, such as salt, and whatever he could sell—instruments and other articles.

I have hitherto failed to notice in some detail, as I had intended, the labored attack made by my friend, the respondents' counsel, on Torres's testimony. At this late period in my argument your honors will hardly have the patience to hear much on that subject. I shall content myself with noticing one or two, as an illustration of the whole. Mr. Kennedy cites Torres's statements

that "El Rosario mine was never worked by La Abra Company," and that the company worked "La Luz and El Cristo only." He then proceeds to show from the statements of witnesses before the commission and from the letter book that the company did work other of its mines. But the account books of the company show (Resp. Ev., 96) that out of a total of $39,000 expended on the nearly a dozen mines only $180.90 was spent on El Rosario, and $33,700 were expended on La Luz and El Cristo. When it is remembered that Torres was testifying from memory of events which occurred nearly thirty years before, it must be admitted his testimony is substantially confirmed by these written records made at the time. Again, Mr. Kennedy refers to Torres's statement that Del Valle and Manjarrez lost $40,000 on La Luz mine during the two years previous to the sale, and then quotes Del Valle and Manjarrez to show that the mines owned by them were profitable during these two years. But it is plain that Torres was speaking of La Luz mine only, and his statement might be entirely correct, and yet the aggregate result of Del Valle and Manjarrez's operations be profitable. I will not dwell on this subject. Torres, though unable to read, was not an ignorant man. His testimony when read by your honors will impress you, as his conduct before the Senate committee did those who heard him, that he is a straightforward and honest witness, thoroughly versed in the practical operations of mining, and well qualified to give evidence as to the facts about which he testified. If his testimony is accepted by this court as true, then it must

by a single document from the company's records, of which it is now known the company had an abundance at the time Collins made his affidavit. Some of these records are now in the possession of this court, and they show beyond any question that Collins exaggerated his statement about one hundred per cent. The new evidence before this court consists of the annual statements of the company, the cash accounts of the company; the letter book, which contains a full history of its financial operations, including the drafts drawn and moneys expended; the judgment of the New York court, and the testimony of Garth, the treasurer. These data enable the court to determine with a great degree of accuracy the amount of money put into the enterprise. Let us examine the facts as shown at the New York office. The annual statements of the company for 1867 and 1868 state that the "capital stock actually paid in" was $157,000; but the annual statement for 1866 shows that of this amount $22,000 was in stock "issued in payment of La Abra silver mine." (~~Compl. Ev., 3–5.~~) The cash payments on the stock were made in gold. These facts are confirmed by Garth and other witnesses. (~~Resp. Ev., 55~~; Senate Report, p. 194–6.) In addition to this there was the judgment against the company for $53,670 (~~Compl. Ev., 8~~), which represented various advances made by different directors. But we know from Garth's statement made before the Senate committee (Report, p. 835) and from our knowledge of the practice prevailing in the courts of the United States at the time that this judgment represented the currency

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R. 704

R. 468

value of the indebtedness upon which suit was brought. The indebtedness of the company is fixed in the annual statement for 1868 at $72,000. Garth was examined on this point and testified that the advances made by stockholders was more than $40,000, but could not swear it was as much as $70,000. (Resp. Ev., 68.) When before the Senate committee, he was asked to name the debts against the company other than the judgment, and all that he could remember and specify as having been paid was to Exall for salary, $2,000 or $2,500, and to Mr. Hearn, a director, for advances, $1,500 or $2,000. (S. Report, p. 834–5.) We know from the letter book and Garth's letters that the last draft (Feb. 5, 1867, Ex. B, 298) which was honored by the company had been paid some time before the judgment and must have been included in it. If we reduce the judgment to a gold basis at 50 per cent, we are enabled from the foregoing facts to make up this table:

Total cash expenditures, 1865–1868.

Stock (less $22,000 to Hardy for La Abra)	$135,000
Judgment ($53,670 in currency)	35,780
Exall's salary paid	2,500
Hearn's advanced paid	2,000
Total	175,280

Let us now turn from New York to Tayoltita. On page 95 of respondents' evidence (printed) will be found a cash statement from December 15, 1865, to January 1, 1868. An examination of this statement and a comparison of it with the letter book will show that it embraces

all the cash that ever could have or did come into the hands of the superintendent at the mines. By a comparison with the statement on page ~~96~~ it will also appear that it embraces all payments on account of the purchase of the mines and the machinery. The cash statement shows a total of $163,009. The statement of balances of accounts shows a total of $169,112. This difference is unimportant and easily accounted for. The general result of these figures is substantially confirmed by the banking and business houses at Mazatlan through whom all the money between the New York and Tayoltita offices passed. Echeguran, Quintana & Co. was the house through whom the business was transacted during Bartholow's term and up to July, 1866, when De Lagnel transferred the business to the house of Echenique, Peña & Co., which continued to transact the business of the company up to Exall's departure. (~~Ex. B, 269.~~) Pedro Echeguran, of the first-named firm, testified before the commission that the transactions of La Abra Company with his firm amounted to $108,600, which included the payment to Del Valle for the mines. (~~Ex. A, 410.~~) Peña, of Echenique, Peña & Co., states that the total of their transactions amounted to $67,000. (~~Ex. A, 409.~~) Those two sums amount to $176,600.

We thus have three separate and independent sources from which to determine the actual cash outlay of the company. The variance is so small that it only serves to confirm the general result. The theory for the manifest discrepancy between these amounts taken from the company's own records and Collins's figures, which is

set up in respondents' brief and based upon the testimony of Ely, is that the figures represent United States currency and not gold. But respondents' counsel overlooks the fact that Collins states the purchase price of the mines, $50,000, admitted on both sides to be in gold, and makes no distinction when he comes to set forth the expenditures of the company. Collins knew that his affidavit was to be used before an international commission, and if he did not as a good business man know that gold is the basis of all international transactions his overshrewd lawyer, who says he drew the affidavit, was well aware of the fact that the treaty (Art. IV) expressly provided that the awards should be paid "in gold or its equivalent." (H. Ex. Doc. 103, p. 8.) Besides, Sir Edward Thornton adopted Collins's figures as made upon a gold basis, and gave his award in gold, without for a moment considering they were on a currency basis. I shall refer again to Collins's attitude before this court when I come to consider his affidavit in detail.

Before dismissing the matter of expenditures, I direct attention to one item, included in all these statements and embraced in Collins's totals, which was improperly included and fraudulently concealed by Collins. I refer to the amount paid for assessments on the 550 shares of stock in the Guadalupe Mining Company, owned by La Abra Company, to the amount of at least $9,000. (Ex. B, 288.)

Mr. Kennedy cites the allegation in the bill of complaint wherein the Government charges that Collins and others grossly and fraudulently misstated and exaggerated

the amount of money expended by the company, and very truly says it is an allegation of great importance. It may be added, also, that it is of very serious importance to the company, in view of the evidence now before this court.

THE BOOKS AND PAPERS OF THE COMPANY.

The evidence, mainly consisting of the books and accounts of the company itself, were, as I have said, in the hands of the company at the time the claim was filed before the commission. Garth has stated, and it is admitted by respondent's counsel (~~Compl. Ev., 2),~~ that Mr. Worthington, the secretary of the company, was in New York in 1870, the year the claim was filed and the year after the claimants began to take their testimony. Garth says the secretary had charge of the books and papers of the company kept in New York. We now know that among these books and papers were a letter book, a stock book, a minute book, and if the company observed the most ordinary business methods, there must have been a cash book. There were also the annual statements, and there should have been some record or entry of the judgment of the New York court. There were also the letters of Bartholow, De Lagnel, and Exall, and the monthly financial statements, reports of the ores extracted and of assays, returns and expenses of the mills, copies of balance sheets from the books, etc. These papers, in the possession of the commission, would have thrown a flood of light upon the averments in the memorial, but they were all carefully withheld by the claimants' attorneys. Respondent's counsel seeks to divert attention from this

fact by alleging that the Government in this suit and the representatives of Mexico heretofore have been making demands upon the claimants' attorneys to produce the books and papers kept at the mines, when during all these years they have been in the possession of the Mexican Government; but no such demands have been made.

Exall's letter to Granger show that the books were left at Tayoltita. It was not those books for the production of which notice was served on claimants' attorneys, but the books in New York and the letters, records, and statements which the letter book showed had been sent to the home office. (~~Compl. Ev.,~~ 2.) Neither is it true that in presenting the letter book and letters accompanying it to the Secretary of State and to Congress the Mexican Government caused it to be understood that they constituted all the records which it had obtained and possessed. That Government always looked forward to an investigation, preferably of a judicial character; meanwhile it submitted such evidence as would be sufficient to determine whether the charges of fraud and perjury which it presented should be investigated. When this judicial examination was instituted the account books of the company received through Granger were produced in due time. The fact that when produced they were found to be of so little importance, of itself refutes the charge of bad faith brought against Mexico. The charge as presented in respondent's brief is unworthy the high character which its author sustains in the profession, and ought never to have been made. These books were received by Sr. Vallarta, secretary of foreign affairs of Mexico in 1878, and have been in the charge of Hon.

Ygnacio Mariscal, his successor, up to their presentation to this court in 1894. I had the honor of a personal acquaintance with Sr. Vallarta. Some of the members of this court have had a personal acquaintance with Mr. Mariscal so long the honored diplomatic representative of his country in Washington, and for fifteen years past the distinguished and able secretary for foreign affairs of his country. They are gentlemen incapable of committing a dishonorable act, and charges against them of bad faith can only react upon their author. As well might a charge of official dishonor be made against Daniel Webster or William H. Seward.

EXALL'S VISIT TO NEW YORK AND ITS RESULTS.

We return now to Exall's trip to New York and its results. Aside from his letter to Granger from Mazatlan, the only other evidence of his presence there was that he went to the business agency of the company at that port, Echenique, Peña & Co., and borrowed $250 for his expenses to New York. (~~Ex. A, 409.~~) It does not appear from Mr. Peña's deposition, taken by claimant, that Exall made any complaint about a forcible expulsion from the mines. The only complaint in the deposition is that the $250 has never been paid. Extracts from Garth's letters of July 10 and August 10, six and seven months before, would seem pertinent in this connection (~~Ex. B, 321–322~~):

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> (July 10:) Don't run into debt or get into difficulty with the authorities, if there are any such things existing, but at the same time be firm in

maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government.

(August 10:) From the reports we get in the papers we find that Americans and all foreigners will not be protected in their persons and rights in that country, and that we may have to abandon our property there. If so, you must take all necessary and legal measures, by protest and otherwise, to secure our claim against the Government.

(By reference to Senate Report, pp. 165–166, it will be seen that Garth swore that at the time those letters were written nothing had occurred at the mines to make a claim against Mexico.)

There was an American consul at Mazatlan, and Exall had made his acquaintance, but he did not call upon him after his flight (~~Resp. Ev., 40, 41~~); no protest was filed before him, and no report made to him of this great despoilation of the valuable property of an American company. In due time Exall arrived in New York. His account of his reception by the company, as contained in his letters to Granger, bear the "earmarks" of truth, and are confirmed by Garth's testimony. I am careful to make this statement, because the respondents' brief has said that we should not believe anything he (Exall) says unless it is corroborated by admitted facts or other sufficient evidence" (p. 181). (See extract from Exall's letters to Granger, Ex. B, 322–326, and Garth's testimony, Resp. Ev., ~~57, 62–3–4–5.~~)

P.P. 689-69

P.P. 286-29

P.P. 706, 711-712-713-714

Thus we see that Exall's report to Granger that Garth was "disgusted with the enterprise" and "would have nothing more to do with it," and that the company was in the same frame of mind, is fully confirmed by Garth's testimony. Exall brought suit for wages due, but his claim was finally paid, and he and the company, as Garth expressed it before the Senate committee (Senate R., 153), for a time dropped into "innocuous desuetude."

At this point it is necessary to notice the most wretched and disgusting piece of evidence (if it can be dignified by such a term) in this whole mass of falsification and perjury. When the contents of the letter book was brought to the attention of Congress by means of the Slaughter pamphlet in 1878, it struck consternation into the ranks of the claimants' attorneys, and Mr. Ely, the man Friday of the company, was summoned to Washington to bring his peculiar talents into play. It was he who drafted the Collins affidavit, and had been the hand behind the screen during the preparation of the claim for presentation to the commission. As soon as he saw the situation in Congress he posted off to New York to see Exall, but, strange to say, he neglected to take with him a copy of the pamphlet containing the letters. Upon his verbal statement of the contents of the letter book, Exall made an affidavit (~~Resp. Ev., 19~~), the composition of which Ely modestly credits to Exall. Whichever was the author, it is a remarkable document. After reading it, your honors will not wonder that Mr. Kennedy should declare, "It prevents us from believing anything he says unless it is corroborated by admitted facts or other sufficient evidence." Exall's story, in brief, is that he and

Granger concocted a plan to impose upon the company the false statement that the ores were worthless and the mines were of no value, in order to get the company to part with them for a song, and that the letters to Garth which appear in the letter book were a part of the scheme.

Exall's story does not, however, dispose of the letters of Bartholow and De Lagnel, nor his own letters to other persons; nor the entries in the account books, and it is in direct conflict with a mass of other evidence before this court. But the affidavit is so improbable upon its face and is so conflicting in its statements that the court will give to it no manner of credence. It will only serve the purpose of more fully exposing the utter depravity of the claimants' chief witness before the commission.

The history of the prosecution of the claim throws additional light upon its fraudulent character. It has been seen that after the alleged forcible abandonment the company did nothing. No protest was made to any authority in Mexico; not a word was said or a line written to any United States official, from the consul in Mazatlan to the Secretary of State or the President at Washington; no meeting of the directors of the company was held after the interview with Exall to justify to the stockholders their act of abandonment; no one was sent to Mexico to look after this valuable property, and so little attention or consideration was given to the high-handed outrage of the Mexican officials that it was not even noticed in the newspapers. (Resp. Ev., 78.) In the graphic language of Garth, "the thing just dropped dead;" "the cow was dry."

Eighteen months passed without a single act being done or a step being taken by any officer, director, or stockholder of the bankrupt and defunct company. To all appearances it was dead and buried beyond the hope of resurrection. But, strange to say, a fortuitous circumstance suddenly injected life into the corpse. Mr. Garth, who had turned his dry cow out to pasture, finds he had made a mistake as a dairyman, or at least he has discovered, independent of the slow process of nature, how to again distend the shriveled and exhausted udders. His testimony as to the fortuitous circumstance is as follows (~~Resp. Ev., 58–9~~):

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> Q. Tell us how you happened to meet Mr. Rose.
>
> A. I stopped over in Washington, from Richmond, going to New York. I had business in Richmond, and stopped over here at Willard's Hotel. There I met a friend of mine, and he was in conversation with a gentleman, and he introduced me to him—Judge Rose, I think he called him at that time. When he heard my name he said, "I used to know a gentleman of your name, John Garth, of Virginia." I told him that was my father's name, and he seemed to take some interest in me. In talking it over with him, I understood there was a mixed commission, I think it was called, between Mexico and the United States, organized under a treaty, for the purpose of settling any claims preferred by citizens of the United States and Mexico against the other, and I then mentioned to him the fact that Exall had been expelled from the country and run away, and he thought it was——
>
> Q. (Interposing.) Don't say what he thought. Say what he said.

A. He said it was a suitable case to be presented to the commission.

Q. What did he do?

A. He accompanied me to New York the next day.

Q. Did he take you to anyone in Washington before you went to New York?

A. Yes, sir; I think he took me to see Mr. Hubley Ashton.

Q. What position did he hold?

A. I think he held a position as commissioner here. I do not know what position he actually held.

Q. Was he connected with this commission?

A. Yes, sir; I think he was the main man.

Q. Did you go with Judge Rose to see Mr. Hubley Ashton?

A. Yes, sir.

Q. What did you do? State what you did next.

A. After he accompanied me to New York I introduced him to Mr. Exall. I found Mr. Exall and introduced Judge Rose to him, and they had a conversation, I suppose. I was a busy man and left them together and he had a talk with Mr. Exall there.

Q. How long were they together?

A. Three or four hours, perhaps.

Q. Did Judge Rose see Mr. Exall after that?

A. Yes, sir; he came to New York afterwards on that business, and had a conversation with Mr. Exall.

Q. Is that the same Robert Rose who signed the memorial of La Abra Company, which you will find on page 6 of the complainant's bill, the signature "La Abra Silver Mining Company, by their attorney in fact, Robert Rose." Is that the same man?

A. That is the same man.

The notice of the claim was not filed with the Secretary of State until March 17, 1870, but Exall's first affidavit was made December 2, 1869, and the meeting of Garth with Rose must have been a short time before the latter date, although Garth's recollection fixes it early in the fall of 1869. It is plain from the testimony just read that Garth's accidental meeting with Rose was the inception of the claim. It is true, Garth says Bartholow had written to him about the existence of the claims commission before he met Rose (~~Resp. Ev., 70~~), but no action was taken on his letter, and it does not appear to have made any impression on Garth. After Rose got the matter of the claim in his hands, a new and important character appears on the scene in the person of one Gen. Alonzo W. Adams. He was employed by Bartholow without the knowledge of Garth (~~Resp. Ev., 69~~), and his special duty appears to have been to collect evidence to support the claim, and he was given the incentive by means of a contract of a one-third interest in the total amount of the award to be secured. (Senate R., 549.)

So desperate was the claim in the minds of the directors that they were willing to make such an agreement. Adams's contract with the company was signed December 9, 1869, but he had already entered on his work, as Exall's deposition was taken on the 2d and Green's on the 13th of that month, and we know from Garth's testimony that Adams took Green's deposition. (~~Resp. Ev., 61~~.) Adams then went to Mexico, via San Francisco, in which city he took the depositions of Cole, Smith, and Bissell. During this, his first, visit to Mexico he took at Mazat-

lan various depositions, before the American consul, and procured one from Del Valle, taken at the city of Durango; and in 1872 he made a second trip to Mexico, visiting Mazatlan, San Dimas, and Durango City. It may be said the crime of suborning witnesses has not been distinctly brought home to Adams; but it does appear that every material witness which he procured to sustain the claim has been guilty of perjury. If he was seeking only honest witnesses, it is very strange that he should have found only perjurers. It is a striking and singular fact that Adams did not take the depositions of any of the American employees at the mines of La Abra Company, except Exall and Granger. (Ex. B, 268, for list.) Exall knew of the whereabouts of Collins, the head miner, and Elder, the assayer, but it did not suit Adams's purpose to examine them. The respondents' brief makes frequent reference to Adams's conduct, which it characterizes as honorable and prudent, and cites the Senate Report (p. 927) to show that certain charges against him have broken down and been abandoned (p. 25). The examination therein cited relates to charges against Adams contained in H. Ex. Doc. 103, Forty-eighth Congress, first session, which were submitted to the Secretary of State and by the President to Congress. It will be necessary to examine Doc. 103, frequently cited in respondents' brief, to understand just how far those charges have broken down and been abandoned.

(Objection, sustained by the court, being made to the use of Doc. 103, as porposed, the remarks made on this point are omitted.)

ALLEGED NEGLIGENCE OF MEXICO.

I desire now to make a brief reference to the criticism which has been made against Mexico in connection with that case. It is alleged that abundant time and opportunity was afforded the Mexican agent to procure and present defensive evidence, and the fact is cited that the case was pending five years before the final award was rendered, as though that time was granted for defensive evidence.

The question whether Mexico was negligent in making its defense before the commission is not one to be determined by this court, but for a proper understanding of the fraud charged in the bill I think it desirable to bring to your honors' attention certain facts. When the commission met the Mexican agent was confronted with 1,017 claims of American citizens, aggregating $470,126,613. During almost the entire time the commission was in session Mexico was distracted by internal revolutions and local disorders. The country did not assume the stable condition which has marked its later history until 1876, when General Diaz became President. Under most adverse circumstances the Mexican agent set to work industriously to defend his country against the enormous mass of claims presented. He succeeded in defeating 99 per cent of the entire amount, and when the umpire had concluded the labors of the commission the total awards against Mexico were $4,125,000, of which the two cases pending in this court represent $1,170,000, or considerably more than one-fourth of that aggregate.

Under the circumstances it is not strange that out of over one thousand claims two without merit should have been successful, and it imposes the weightier obligation upon the United States to thoroughly investigate the charges of fraud respecting these two.

REVIEW OF CLAIMANTS' DEPOSITIONS.

In the light of the facts which I have established in the foregoing review of the case, I desire to take up the depositions of some of the more important witnesses for the claimants before the commission, among whom I embrace the two superintendents, Bartholow and Exall, and the president of the company, Collins. After this review it will readily be seen that they have falsely and knowingly set forth alleged facts which never existed, falsely and knowingly misstated and distorted facts which did exist, and they have committed perjury in the most unblushing manner. (See depositions in Exhibit A, of W. G. S. Clark, p. ~~367~~; John Cole, ~~361~~; John P. Cryder, ~~374~~; Jesus Chavarria, ~~386~~; Thomas J. Bartholow, ~~472~~; Charles H. Exall, ~~336~~ and ~~455~~; George C. Collins, ~~344~~ and ~~453~~.)

PARAGRAPH XVI OF BILL OF COMPLAINT.

The respondents' counsel, in his brief, has seen fit to argue his side of the case by discussing in detail the specifications in Paragraph XVI of the bill of complaint. In view of the new testimony and of the analysis which I have made, I think it has been shown that this paragraph of the bill has been substantially and conclusively

maintained by the Government. I feel sure your honors will conclude that rarely has a case involving such a mass of details and so long and varied a history been so fully made out, and that the respondents' counsel has not successfully assailed a single material specification in the paragraph.

CONCLUSION OF ARGUMENT.

I have now concluded my review of the evidence before this court. I feel confident I have redeemed my promise to establish to the satisfaction of your honors that not more than two of the twenty-eight averments in the claimants' memorial, as paragraphed by me, are true in fact; that the other twenty-six are false in whole or in part; that every averment which is essential to establish the claim is absolutely false; and that the award made by the commission was, in the language of the statute, obtained by fraud, effectuated by means of false swearing and other false and fraudulent practices on the part of La Abra Company, its agents and attorneys.

The review which I have made establishes beyond any question that the cause of abandonment of the mines was the bankrupt condition of the company; that when all the capital was spent, the credit exhausted, and the ores proved worthless, there was nothing else to be done than abandon to the mines. It is manifest that when Exall returned to New York and made his report the entire enterprise came to an end, no steps were taken indicating that the company had any complaint against Mexico, and

no thought was entertained by any of its officers of instituting a claim. When the claims commission was organized and lawyers began to be busy respecting it, Garth, the treasurer and general manager, and Bartholow and Exall, two of the superintendents, with the aid of their agent, Adams, fabricated a claim, every essential allegation to sustain which they knew to be false and fraudulent, and at the proper time Collins, the president, proved their willing tool and knowingly joined in the conspiracy.

I doubt whether, in the long course of your honors' judicial experience, you have had to deal with a more unblushing and shameful fraud than this. It is the more aggravated in its character because the conspirators did not scruple to make use of the name and great influence of the Government of the United States to perpetrate this fraud upon a neighboring and friendly Government. But fortunately for our national reputation the men who have stood at the head of affairs in our Government have in all our history, thus far, been actuated by a high sense of honor and justice, and when the charges of fraud in this case were brought to the attention of the Secretary of State and the successive Presidents they have not hesitated to insist that the honor of the United States required that these charges should be judicially investigated. Thanks only to the obstructive tactics of the claimants, this long-deferred desire of the Government of the United States is only now being realized. Crime is swift and justice is often slow of foot, but in well-regulated society punishment generally overtakes the guilty.

More than twenty years have passed since this fraud had its culmination in the award of a well-meaning but deceived judge. We are now reaching the close of the investigation, so long sought. I leave the case in the hands of your honors in the perfect assurance that in the decision which you shall render the honor of the United States will be protected and this great fraud finally defeated.

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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 498.

LA ABRA SILVER MINING COMPANY, appellant,
v.
THE UNITED STATES.
} In equity.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO ADVANCE.

And now comes the United States by the Solicitor-General and moves the court to advance the above-entitled cause for hearing at the present term.

REASONS IN SUPPORT OF THE MOTION.

This case grows out of an award made by the United States and Mexican Mixed Commission established by the treaty of July 4, 1868, between the United States and the Republic of Mexico for the adjustment of claims

and complaints of the citizens of each Government against the other. (15 Stat., 679.)

As represented by Mexico and as established by the decree of the Court of Claims, the claim of La Abra Silver Mining Company, the appellant, was imposed upon the said commission "by fraud effectuated by means of false swearing and other fraudulent practices upon the part of said company and its agents."

A good deal of friction in the relations between this Government and the Government of Mexico was produced by the delay that occurred before a proper method for the investigation of the charges of fraud made by Mexico was provided by the act of December 28, 1892 (27 Stat., 409), conferring jurisdiction on the Court of Claims for that purpose; and it is respectfully submitted that an order of this court directing an advancement of the said cause for hearing at the present term would seem to be no more than a proper consideration for the friendly relations between the two Governments, and for the interests of Mexico herself, to whose treasury a large sum of money is authorized to be returned by this Government by section 4 of the said act in case the decree in this case should be affirmed.

Respectfully submitted.

J. K. RICHARDS,
Solicitor-General.
WM. A. MAURY,
Special Assistant to the Attorney-General.

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LA ABRA SILVER MINING COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 29. Argued February 20, 21, 23, 1899. — Decided December 11, 1899.

The Commissioners appointed under the treaty between the United States and Mexico concluded July 4, 1868, and proclaimed February 1, 1869, (15 Stat. 679), having differed in opinion as to the allowance of the claim of the La Abra Silver Mining Company, a New York corporation, against Mexico, the Umpire decided for that company and allowed its claim, amounting, principal and interest, to the sum of $683,041.32. Mexico met some of the instalments of the award and then laid before the United States certain newly discovered evidence which, it contended, showed that the entire claim of the La Abra Company was fictitious and fraudulent. The Secretary of State thereafter withheld the remaining instalments paid by Mexico, and upon examining the new evidence reported to the President that in his judgment the honor of the United States was concerned to inquire whether in submitting the La Abra claim to the Commission its confidence had not been seriously abused, and recommended that Congress exert its plenary authority in respect

Syllabus.

of the disposition of the balance of the funds received from Mexico and remaining in the hands of the United States. Finally, Congress passed the act of December 28, 1892, (27 Stat. 409, c. 14,) by which the Attorney General was directed to bring suit in the name of the United States in the Court of Claims against the La Abra Company and all persons asserting any interest in the award of the Commission to determine whether that award was obtained, as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the company, or its agents, attorneys or assigns, and if so determined, to bar and foreclose all claim in law or equity on the part of the company, its legal representatives or assigns to the money or any such part thereof received from the Republic of Mexico for or on account of the award. By that act full jurisdiction was conferred on the Court of Claims, with right of appeal to this court, to determine such suit, to make all proper interlocutory and final decrees therein, and to enforce the same by injunction or other final process. The act further authorized the return to Mexico of any moneys paid by it on the award and remaining in the custody of the United States, if the issue of fraud was determined adversely to the company. If the decision was favorable to the company, it was made the duty of the Secretary of State to proceed with the distribution of the funds in his hands. The act of 1892 was presented to the President on December 20. Two days thereafter Congress took a recess until January 4, 1893. The President signed the bill on December 28, 1892. *Held:*

(1) That the act of 1892 was not invalid by reason of its having been signed during a recess of Congress. Whether the President can sign a bill after the final adjournment of Congress for the session was not decided;

(2) The suit brought by the Attorney General involved rights capable of judicial determination and was a "case" within the meaning of the clause of the Constitution extending the judicial power of the United States to all cases in law and equity arising under that instrument, the laws of the United States and the treaties made by it or under its authority. The act did not in any wise trench upon the constitutional functions of the President. Nor was it simply ancillary or advisory to him. Whatever decree was rendered by the Court of Claims was, unless reversed, binding and conclusive upon the United States and the defendants;

(3) The act was not liable to the objection that it was inconsistent with the principles underlying international arbitration. On the contrary, such legislation is an assurance in the most solemn and binding form that the Government of this country will exert all the power it possesses to enforce good faith upon the part of citizens who, asserting that they have been wronged by the authorities of another country, seek the intervention of their Government to obtain redress;

(4) This court was entitled to look at all the evidence in the cause on

the issue as to fraud, because the act did not contemplate a special finding by the Court of Claims of the ultimate facts established by the evidence;

(5) The question stated in the act of 1892 — whether the award in question "was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys or assigns" — is answered in the affirmative as to the whole sum included in the award.

THE questions involved in this case arose from a claim made by the La Abra Silver Mining Company, a New York corporation, for damages alleged to have been sustained in consequence of certain acts and omissions of duty upon the part of official representatives of the Republic of Mexico.

The claim was originally the subject of investigation by a Commission organized pursuant to a Convention between the United States of America and the Republic of Mexico concluded July 4, 1868, and proclaimed February 1, 1869. 15 Stat. 679.

An award was made by the Commission in relation to this claim, but it has been executed only in part — its full execution having been suspended by legislation in conformity with which the present suit was instituted to ascertain whether the award had been obtained by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the La Abra Company, its agents, attorneys or assigns. Act of December 28, 1892, c. 14, 27 Stat. 409.

It will conduce to a clear understanding of the questions to be determined if we state fully the circumstances that led to the organization of the Commission, and show how it came about that a court established by this Government took cognizance of a moneyed demand made by an American corporation against a foreign government.

By the above Convention of July 4, 1868, it was provided that all claims on the part of corporations, companies or private individuals, citizens of the United States or of the Republic of Mexico, arising from injuries to their persons or property committed by the authorities of the respective Gov-

ernments and presented to either Government for its interposition with the other since the treaty of Guadalupe Hidalgo of February 2, 1848, and which remained unsettled or did not arise out of any transaction prior to that date, as well as any other claims presented within the time prescribed in the Convention, should be referred to two Commissioners — one to be appointed by the President of the United States by and with the advice and consent of the Senate and the other by the President of the Mexican Republic.

The Commissioners were conjointly to investigate and decide the claims presented to their notice in such order and manner as they thought proper, but "upon such evidence or information only" as should "be furnished by or on behalf of their respective Governments." Where they failed to agree in opinion upon any individual claim, they were to call to their assistance an Umpire, who was to decide upon it finally and without appeal. It was competent for each Government to name one person to attend the Commissioners as its agent, to present and support claims on its behalf and to represent it generally in all matters connected with the investigation.

When every case presented had been decided by the Commissioners or the Umpire, the total amount awarded in favor of the citizens of one Government was to be deducted from that awarded to the citizens of the other Government, and the balance to the amount of three hundred thousand dollars was to be paid to the Government in favor of whose citizens the greater sum had been awarded, without interest or any other deduction than that specified in the Convention. The residue was to be paid in annual instalments not to exceed three hundred thousand dollars in any one year until the whole amount had been paid.

The contracting parties agreed to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every claim upon either Government arising out of any transaction of a date prior to the ratification of the Convention and to give full effect to the decision of the Commission or the Umpire without objection, evasion or delay; and they further engaged that every such claim whether or not

presented to the notice of, made, preferred or laid before the Commission should from and after the conclusion of its proceedings be considered and treated as finally settled, barred and thereafter inadmissible.

The Commission was organized in the city of Washington and held its first meeting on the 31st day of July, 1869, Mr. William H. Wadsworth and Señor Don Miguel Maria de Zamacona being the Commissioners respectively, and Mr. J. Hubley Ashton and Mr. Caleb Cushing the agents respectively, on behalf of the United States and Mexico. Dr. Francis Lieber the first Umpire having died, he was succeeded by Sir Edward Thornton, who at that time was the British Minister accredited to the Government of the United States at Washington.

On the 23d day of February, 1870, Secretary Fish issued a circular referring to the Convention of 1868 and stating that the Department of State deemed it advisable to refer to the Joint Commission all claims of corporations and citizens of this country without special examinations of their merits. He took care to say that the Government thereby expressed no opinion either as to the merits of the claims presented or as to the principles of law to be invoked in their support. The responsibility of deciding questions of fact and law, he observed, rested with the Commissioners.

On the 17th day of March, 1870, the La Abra Company gave written notice to the Secretary of State that it claimed from Mexico $1,930,000 "for damages and losses suffered by it in consequence of the violence and outrages committed by the authorities of Mexico against the rights of said company in 1867 and 1868." It asked for the interposition of the Government of the United States with Mexico for the payment of that demand and requested that its claim and proofs thereafter to be produced be referred to the Commission for settlement. This notice was transmitted by the Secretary to the Commission.

Subsequently, June 14, 1870, the Company filed with the Commission a memorial of its claim stating the amount thereof to be $3,000,030. Before the case was finally heard the claim was increased to $3,962,000.

The period within which the Commission was to conclude its labors was from time to time extended by the two Governments. Of the claims presented by the United States there was allowed the sum of $4,125,622.30, while of the claims presented by Mexico the sum of $150,498.41 was allowed.

In respect of the claim of the La Abra Company the Commissioners differed in opinion and the case went to the Umpire for consideration.

The award of the Umpire, which was made December 27, 1875, embraced the following items as representing the damages sustained by the La Abra Company and to be paid by the Republic of Mexico: (1) On account of subscriptions and sales of stock, $235,000; (2) Money lent and advanced, $64,291.06; (3) Rent, expenses, salaries, law expenses, $42,500; (4) Amount derived from reduced ores, $17,000; (5) Ore extracted from the mines and deposited at the mills, $100,000; in all, $458,791.06. On $358,791.06, the aggregate of the first four items, the Umpire allowed interest from March 20, 1868, at six per cent, and upon $100,000, the fifth item, interest was allowed from March 20, 1869. The total amount of principal and interest allowed was $683,041.32.

An application was made to the Umpire by the Government of Mexico for a rehearing of the case, but a rehearing was denied.

Subsequently, the Mexican Government without at all disputing its obligation under the Convention of 1868 to comply with the award placed in the possession of the Secretary of State of the United States certain books, papers and documents which it alleged had been then recently discovered and would show that the claim of the La Abra Company was not only fictitious and fraudulent but had been supported by false and perjured testimony. At that time a large part of the sum awarded to the Company had been paid by Mexico and was in the hands of the Secretary of State. The distribution of the amount received had been delayed by the Secretary acting under the orders of the President to await legislation deemed necessary in order to make good to the fund the amount with which it was chargeable and

also because as stated by the Secretary it was desirable that the form and manner of the reservation from the instalment in hand of the expenses of the Government should first be settled.

These difficulties were met by the passage of the act of June 18, 1878, c. 262, 20 Stat. 144.

By the first section of that act the Secretary of State was authorized and required to receive all moneys paid by the Mexican Republic under and in pursuance of the Conventions of July 4, 1868, and April 29, 1876, and whenever and as often as any instalments should be paid by the Mexican Republic, to distribute the moneys received in ratable proportions among the corporations, companies or private individuals respectively in whose favor awards were made, or to their legal representatives or assigns except as in that act otherwise limited or provided, according to the proportion which the respective awards should bear "to the whole amount of such moneys then held by him, and to pay the same, without other charge or deduction than is hereinafter provided, to the parties respectively entitled thereto."

By the second section it was provided that "out of any moneys in the Treasury not otherwise appropriated a sufficient sum is hereby appropriated to enable the Secretary of the Treasury to pay to the Secretary of State of the United States, in gold or its equivalent, the equivalent of fifty thousand five hundred and twenty-eight dollars and fifty-seven cents in Mexican gold dollars and ten thousand five hundred and fifty-nine dollars and sixty-seven cents in American gold coin, and eighty-nine thousand four hundred and ten dollars and seventeen cents in United States currency, said sums being the aggregate in said currencies respectively of the awards made under the said Convention of July 4, 1868, in favor of citizens of the Mexican Republic against the United States, and having been deducted from the amount awarded in favor of the citizens of the United States, and payable by Mexico, in accordance with article four of the said treaty; and that said sums, when paid to the Secretary of State, as aforesaid, shall be regarded as part of the awards made under the said treaty, to be paid or distributed as herein provided."

The third section made provision for meeting out of the moneys received by the Secretary the expenses of the Commission including contingent expenses paid by the United States as ascertained and determined in pursuance of the provisions of the treaty.

The fourth section provided that in the payment of money in virtue of the act to any corporation, company or private individual, the Secretary of State should first deduct and retain or make reservation of such sums, if any, as might be due to the United States from any corporation, company or private individual in whose favor awards were made under the Convention.

The fifth section of the act was in these words: "And whereas the Government of Mexico has called the attention of the Government of the United States to the claims hereinafter named with a view to a rehearing, therefore be it enacted, that the President of the United States be, and he is hereby, requested to investigate any charges of fraud presented by the Mexican Government as to the cases hereinafter named, and if he shall be of the opinion that the honor of the United States, the principles of public law, or considerations of justice and equity require that the awards in the cases of Benjamin Weil and La Abra Silver Mining Company, or either of them, should be opened and the cases retried, it shall be lawful for him to withhold payment of said awards, or either of them, until such case or cases shall be retried and decided in such manner as the Governments of the United States and Mexico may agree, or until Congress shall otherwise direct. And in case of such retrial and decision, any moneys paid or to be paid by the Republic of Mexico in respect of said awards respectively shall be held to abide the event, and shall be disposed of accordingly; and the said present awards shall be set aside, modified or affirmed, as may be determined on such retrial: *Provided*, That nothing herein shall be construed as an expression of any opinion of Congress in respect to the character of said claims, or either of them." 20 Stat. 144, c. 262.

Pursuant to the direction of President Hayes the investi-

gation required by the fifth section of the act of June 28, 1878, was made by the Secretary of State.

Having reviewed all the proceedings of the Commission, including the testimony originally submitted to it, the supplemental evidence furnished in support of the allegations of fraud as to the Weil and La Abra claims, and the action theretofore taken by the Department of State, Secretary Evarts referred to the contention that in deciding against opening those awards diplomatically and reëxamining them by a new international commission, the whole discretion vested in the Executive as a part of the treaty-making power and under the special provisions of the act of Congress was exhausted, and that the payments in the cases referred to should be no longer suspended. He said that a solicitous attention to the rights of the claimants and the duty of the Executive in the premises had confirmed him in the opinion that Congress should determine whether "the honor of the United States" required any further investigation in these cases or either of them, and provide the efficient means of such investigation if thought necessary.

After stating the considerations which led him to that conclusion, the Secretary proceeded: "While these considerations led to the conclusion that these cases ought not to be made the subject of a new international commission, I was yet of opinion that 'the honor of the United States' was concerned to inquire whether in these cases, submitted by this Government to the Commission, its confidence had been seriously abused, and the Government of Mexico, acting in good faith in accepting a friendly arbitration, had been subjected to heavy pecuniary imposition by fraud and perjury in the maintenance of these claims, or either of them, before the Commission. In furtherance, however, of this opinion, it seemed to me apparent that the Executive discretion under the act of Congress could extend no further than to withhold further payments on the awards until Congress should, by its plenary authority, decide whether such an investigation should be made, and should provide an adequate procedure for its conduct, and prescribe the consequences which should follow

from its results. Unless Congress should now make this disposition of the matter, and furnish thereby definite instructions to the Department to reserve further payments upon these awards till the conclusion of such investigation, and to take such further order with the same thereafter as Congress might direct, it would appear to be the duty of the Executive to accept these awards as no longer open to reconsideration, and proceed in the payment of the same *pro rata* with all other awards under the Convention." Senate Ex. Doc. No. 150, 49th Cong. 2d Sess.

The suggestions of the Secretary having been approved by the President, the first, second and third instalments of the award received from Mexico on account of the claim of the La Abra Company, amounting to $138,565.52, were paid to the representatives of that Company. Payments were subsequently made out of moneys received from Mexico, amounting to $103,117.54, leaving in the possession of the United States on account of the award $403,030.08.

After Mr. Arthur became President further distribution of the money received was suspended because of the negotiation of a treaty between the United States and Mexico for a reëxamination of the Weil and La Abra cases. This treaty was signed on the 13th day of July, 1882, and was submitted to the Senate for its approval, but after some delay it was rejected by that body.

While that treaty was before the Senate, Key, as assignee of part of the Weil claim and the La Abra Company filed separate petitions in the Supreme Court of the District of Columbia for a mandamus upon the Secretary of State compelling him to pay to the petitioners their distributive shares of the sums paid by Mexico in accordance with the terms of the Convention of July 4, 1868. In Key's case the writ asked for was awarded, while in the La Abra case the petition was dismissed. The cases having been brought to this court, the judgment in the Key case was reversed with direction to dismiss the petition and the judgment in the La Abra case was affirmed. *Frelinghuysen* v. *Key*, 110 U. S. 63.

Chief Justice Waite, delivering the judgment of this court,

said: "No nation treats with a citizen of another nation except through his government. The treaty, when made, represents a compact between the governments, and each government holds the other responsible for everything done by their respective citizens under it. The citizens of the United States having claims against Mexico were not parties to this convention. They induced the United States to assume the responsibility of seeking redress for injuries they claimed to have sustained by the conduct of Mexico, and as a means of obtaining such redress the convention was entered into, by which not only claims of citizens of the United States against Mexico were to be adjusted and paid, but those of citizens of Mexico against the United States as well. By the terms of the compact the individual claimants could not themselves submit their claims and proofs to the Commission to be passed upon. Only such claims as were presented to the Governments respectively could be 'referred' to the Commission, and the Commissioners were not allowed to investigate or decide on any evidence or information except such as was furnished by or on behalf of the Governments. After all the decisions were made and the business of the Commission concluded, the total amount awarded to the citizens of one country was to be deducted from the amount awarded to the citizens of the other, and the balance only paid in money by the government in favor of whose citizens the smaller amount was awarded, and this payment was to be made not to the citizens, but to their government. Thus, while the claims of the individual citizens were to be considered by the Commission in determining amounts, the whole purpose of the Convention was to ascertain how much was due from one government to the other on account of the demands of their respective citizens. As between the United States and Mexico, the awards are final and conclusive until set aside by agreement between the two governments or otherwise. Mexico cannot, under the terms of the treaty, refuse to make the payments at the times agreed on if required by the United States. This she does not now seek to do. Her payments have all been made promptly as they fell due, as far as these records show.

"As to the right of the United States to treat with Mexico for a retrial, we entertain no doubt. Each Government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection as far as possible against frauds and impositions by the individual claimants. It was for this reason that all claims were excluded from the consideration of the Commission except such as should be referred by the several Governments, and no evidence in support of or against a claim was to be submitted except through or by the Governments. The presentation by a citizen of a fraudulent claim or false testimony for reference to the Commission was an imposition on his own Government, and if that Government afterwards discovered that it had in this way been made an instrument of wrong towards a friendly power, it would be not only its right but its duty to repudiate the act and make reparation as far as possible for the consequences of its neglect if any there had been. International arbitration must always proceed on the highest principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the government from which they come, and it is not to be presumed that any government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own government against another for the redress of his personal grievances must necessarily subject himself and his claim to these requirements of international comity. None of the cases cited by counsel are in opposition to this. They all relate to the disposition to be made of the proceeds of international awards after they have passed beyond the reach of the governments and into the hands of private parties. The language of the opinions must be construed in connection with this fact." *Frelinghuysen* v. *Key*, 110 U. S. 63, 71–73.

Referring to the act of 1878, and observing that it did not

undertake to set any new limits on the powers of the Executive, the court further said: "From the beginning to the end it is, in form even, only a request from Congress to the Executive. This is far from making the President, for the time being, a *quasi* judicial tribunal to hear Mexico and the implicated claimants and determine once for all as between them whether the charges which Mexico makes have been judicially established. In our opinion it would have been just as competent for President Hayes to have instituted the same inquiry without this request as with it, and his action with the statute in force is no more binding on his successor than it would have been without. But his action as reported by him to Congress is not at all inconsistent with what has since been done by President Arthur. He was of opinion that the disputed cases should be further investigated by the United States to ascertain whether this Government has been made the means of enforcing against a friendly power claims of our citizens based upon or exaggerated by fraud, and, by implication at least, he asked Congress to provide him the means 'of instituting and furnishing methods of investigation which can coerce the production of evidence or compel the examination of parties or witnesses.' He did report officially that he had grave doubt as to the substantial integrity of the Weil claim and the sincerity of the evidence as to the measure of damages insisted upon and accorded in the case of La Abra Company. The report of Mr. Evarts cannot be read without leaving the conviction that if the means had been afforded, the inquiries which Congress asked for would have been further prosecuted. The concluding paragraph of the report is nothing more than a notification by the President that unless the means are provided, he will consider that the wishes of Congress have been met, and that he will act on such evidence as he has been able to obtain without the help he wants. From the statements in the answer of Secretary Frelinghuysen in the Key case, it appears that further evidence has been found, and that President Arthur, upon this and what was before President Hayes, has become satisfied that the contested decisions should be opened and the claims retried. Consequently, the Presi-

dent, believing that the honor of the United States demands it, has negotiated a new treaty providing for such a reëxamination of the claims, and submitted it to the Senate for ratification. Under these circumstances it is, in our opinion, clearly within the discretion of the President to withhold all further payments to the relators until the diplomatic negotiations between the two governments on the subject are finally concluded. That discretion of the Executive Department of the government cannot be controlled by the Judiciary. The United States, when they assumed the responsibility of presenting the claims of their citizens to Mexico for payment, entered into no contract obligations with the claimants to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission. As between the United States and the claimants, the honesty of the claims is always open to inquiry for the purposes of fair dealing with the government against which, through the United States, a claim has been made." *Frelinghuysen* v. *Key*, 110 U. S. 63, 74, 76.

After the rejection of the treaty negotiated in 1882, President Cleveland in 1886 sent a message to the Senate calling attention to the act of 1878 and asking consideration of the status of the Weil and La Abra claims. By that message Congress was in substance notified that if it did not take some action in the matter the President would proceed to distribute the funds received from Mexico under the award and remaining in the hands of the United States. The matter having been referred to the Senate Committee on Foreign Relations it recommended the passage of a bill providing for a reinvestigation of those claims. The Committee's report on the subject thus concluded: "This brief résumé of the correspondence between the two Governments shows that Mexico, while observing, in good faith, all her obligations under the Convention, has earnestly and constantly urged upon the United States that these claims were fraudulent. This appeal to the spirit of justice cannot be ignored but should be met by a frank and open examination by our own courts of the facts presented by Mexico. These claimants have no vested rights

growing out of these claims which entitle them to come between Mexico and the United States, and to demand the payment of any part of these awards that are the outgrowth of fraud and perjury." Senate Doc. Report No. 2705, 50th Cong. 2d Sess.

No action having been taken by Congress, the subject was again mentioned in a message sent by the President to the Senate on the 5th of March, 1888, in response to resolutions of that body. The message was accompanied by a report from Mr. Bayard, Secretary of State, in which reference was made to the action of his predecessor. He said: "It is fair to assume that the rejection by the Senate of the treaty signed by Mr. Frelinghuysen, for an international rehearing of the awards, was in no sense an expression of opinion adverse to their investigation, which Mr. Evarts had recommended. It is rather to be regarded as an approval of the opinion which he also expressed, that the investigation should, under the circumstances, be made by this Government for itself, as a matter affecting solely its own honor. It is a remarkable fact that whenever, since the distribution of the Mexican fund was commenced, the deliberate judgment of the official authorized by Congress to make such distribution has been recorded upon the two awards in question, it has uniformly been to the effect that the evidences that the United States, in presenting the claims, had been made the victim of fraudulent imposition were of such a character as to require investigation by a competent tribunal, possessing appropriate powers for that purpose. . . . The sole question now presented for the decision of this Government is whether the United States will enforce an award upon which the gravest doubts have been cast by its own officers in opinions rendered under express legislative direction, until some competent investigation shall have shown such doubts to be unfounded, or until that branch of the Government competent to provide for such investigation shall have decided that there is no ground therefor." Senate Doc. Report No. 2705, 50th Cong. 2d Sess. The Secretary recommended that Congress take action providing expressly for the reference of the Weil and La Abra claims to the Court of

Claims or such other court as was deemed proper in order that a competent investigation of the charges of fraud might be made.

Pending the consideration of this matter in the Senate the Committee on Foreign Relations examined the evidence alleged to have been discovered by Mexico after the award in question, especially certain letters and copies of letters of the officers and agents of the La Abra Company contained in a letter-impression book that was not before the Commission. The Committee in their report to the Senate on March 1, 1889, among other things said: "The main allegation in the petition of the La Abra Company presented to the Mixed Commission, to wit, that the Company was dispossessed of its property by the forcible interference of the Mexican authorities, is disproved and shown to have been wholly false, and this mainly by the correspondence of the Company's own officers and agents; and it appears by the testimony taken by the Committee that the abandonment of the property and the failure of the Company were wholly due to the poverty of the mines and the consequent financial embarrassment of the Company." After reviewing, in the light of precedent and upon principle, the question of the power of Congress to order a reëxamination of the La Abra claim, the Committee concluded its report to the Senate: "It thus appears that the power of Congress to reopen the La Abra award, and to direct a suit to be brought to judicially determine whether or not it was procured by fraud, has been affirmed by successive Secretaries of State, assumed by Congress in the passage of the act of June 18, 1878, expressly declared by committees of both houses of Congress, and substantially held to exist by the highest judicial tribunal of this Government." Senate Doc. Report No. 2705, 50th Cong. 2d Sess.

Reference should here be made to *United States ex rel. Boynton* v. *Blaine*, 139 U. S. 306, 323–326, as announcing principles that affect certain questions arising in the present litigation. That case was commenced on the 23d day of November, 1889, in the Supreme Court of the District of Columbia. Boynton, the relator, as assignee of Weil, sought to

compel the Secretary of State to pay certain moneys received under the award made pursuant to the Convention of 1868. The mandamus asked for was refused and the petition of Boynton was dismissed. That judgment was affirmed by this court. The present Chief Justice, delivering the unanimous judgment of the court, declared its adherence to the principles announced in *Frelinghuysen* v. *Key* above cited and among other things said: "As between nations, the proprietary right in respect to those things belonging to private individuals or bodies corporate within a nation's territorial limits is absolute, and the rights of Weil cannot be regarded as distinct from those of his Government. The Government assumed the responsibility of presenting his claim, and made it its own in seeking redress in respect to it. Under this convention it was the balance that was to be paid, after deducting from what was found in favor of one Government that which was found in favor of the other. So that the moneys paid in liquidation of that balance belonged to the United States, to be increased by appropriation to the extent of the amounts allowed Mexico, and the aggregate to be distributed to the claimants as might be provided." Again: "Congress in furnishing the auxiliary legislation needed to carry the results of the convention under consideration into effect, requested the President to so far investigate certain charges of fraud as to determine whether a retrial ought to be had. This inquiry might have resulted in reopening the awards as between the two nations, or in such reëxamination in a domestic forum as would demonstrate whether the honor of the United States required a different disposition of the particular amounts in question. The validity and conclusiveness of the awards remained unimpugned so long as they were permitted to stand, and the principle of *res judicata* could not be invoked against the United States by individual claimants while the controversy raised as to them remained in *fieri*. In *Frelinghuysen* v. *Key*, while conceding the essential value of international arbitration to be dependent upon the certainty and finality of the decision, the court adjudged that this Government need not therefore close its doors against an investigation into the question whether its

influence has been lent in favor of a fraudulent claim. It was held that no applicable rule was so rigid as not to be sufficiently flexible to do justice, and that the extent and character of any obligation to individuals, growing out of a treaty, an award and the receipt of money thereon, were necessarily subject to such modification as circumstances might require. So long as the political branch of the Government had not lost its control over the subject-matter by final action, the claimant was not in a position, as between himself and his Government, to insist on the conclusiveness of the award as to him. And while it is true that for the disposition of the case of *Frelinghuysen* v. *Key* it was sufficient that it appeared that diplomatic negotiations were pending which, as the court demonstrated, the act of 1878 in no manner circumscribed, it does not follow that the political department of the Government lost its control because those negotiations failed. On the contrary, that control was expressly reserved, for it was made the duty of the President, if of opinion that the cases named should be retried, to withhold payment until such retrial could be had in an international tribunal, if the two Governments so agreed, or in a domestic tribunal if Congress so directed, and, at all events, until Congress should otherwise direct. The fact that a difference of views as to whether a retrial should be international or domestic may have arisen and led to delay, or that such difference may have existed on the merits, does not affect the conclusion. The inaction by Congress is not equivalent to a direction by Congress. The political department has not parted with its power over the matter, and the intervention of the judicial department cannot now be invoked."

This brings us in the orderly statement of the history of this dispute to the act of December 28, 1892, c. 14, 27 Stat. 409, amending and enlarging the above act of June 18, 1878.

That statute recited that the Secretary of State, after investigating the charge of fraud presented by the Mexican Government as to the case of the La Abra Silver Mining Company, had reported that the honor of the United States required that case to be further investigated by the United States to ascer-

tain whether this Government had enforced against a friendly power claims of its citizens based upon or exaggerated by fraud, but that the executive branch of the Government "was not furnished with the means of instituting and pursuing methods of investigation which could coerce the production of evidence or compel the examination of parties and witnesses;" that "the authority for such an investigation must proceed from Congress;" and that the President of the United States had transmitted to Congress the recommendation of the Secretary of State that the case be referred to the Court of Claims, or such other court as might be deemed proper, in order that the charge of fraud made in relation to this claim might be fully investigated. It was therefore enacted:

"That in further execution of the purpose of said act, the Attorney General of the United States be, and he is hereby, authorized and directed to bring a suit or suits in the name of the United States in the Court of Claims against La Abra Silver Mining Company, its successors and assigns, and all persons making any claim to the award or any part thereof in this act mentioned, to determine whether the award made by the United States and Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained, as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys or assigns; and, in case it be so determined, to bar and foreclose all claim in law or equity on the part of said La Abra Silver Mining Company, its legal representatives or assigns, to the money, or any such part thereof, received from the Republic of Mexico for or on account of such award; and any defendant to such suit who cannot be found in the District of Columbia shall be notified and required to appear in such suit by publication as the court may direct, in accordance with law, as applicable to cases in equity.

"§ 2. That full jurisdiction is hereby conferred on the Court of Claims to hear and determine such suit and to make all interlocutory and final decrees therein, as the evidence may

warrant, according to the principles of equity and justice, and to enforce the same by injunction or any proper final process, and in all respects to proceed in said cause according to law and the rules of said court, so far as the same are applicable. And the Secretary of State shall certify to the said court copies of all proofs admitted by the said Mixed Commission on the original trial of said claim, and the said court shall receive and consider the same in connection with such competent evidence as may be offered by either party to said suit.

"§ 3. That an appeal from any final decision in such cause to the Supreme Court of the United States may be taken by either party within ninety days from the rendition of such final decree, under the rules of practice which govern appeals from said court; and the Supreme Court of the United States is hereby authorized to take jurisdiction thereof and decide the same.

"§ 4. That in case it shall be finally adjudged in said cause that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, was obtained through fraud effectuated by means of false swearing, or other false and fraudulent practices of said Company or its assigns, or by their procurement, and that the said La Abra Silver Mining Company, its legal representatives or assigns, be barred and foreclosed of all claim to the money or any part thereof so paid by the Republic of Mexico for or on account of such award, the President of the United States is hereby authorized to return to said Government any money paid by the Government of Mexico on account of said award, remaining in the custody of the United States, that has not been heretofore distributed to said La Abra Mining Company or its successors and assigns, which such court shall decide that such persons are not entitled, in justice and equity, to receive out of said fund.

"§ 5. That, during the pendency of said suit and until the same is decided, it shall not be lawful for the Secretary of State to make any further payments out of said fund, on account of said award, to La Abra Silver Mining Company,

or its legal representatives, attorneys or assigns; and in case it shall be finally adjudged in said cause in either the Court of Claims or in the Supreme Court of the United States that the award made by said Mixed Commission, so far as it relates to the claim of La Abra Silver Mining Company, or any definable and severable part thereof, was not obtained through fraud as aforesaid, then the Secretary of State shall proceed to distribute so much of the said award as shall be found not so obtained through fraud, or the proceeds thereof remaining for distribution, if any, to the persons entitled thereto." 27 Stat. 409, c. 14.

Pursuant to the provisions of that act the Attorney General brought the present suit in the Court of Claims. The defendants are the La Abra Company and numerous individuals who assert some interest in the award made in respect of its claim against Mexico. The relief asked by the United States is indicated by the following paragraph in the bill:

"Your orator further shows, that by reason of the premises a controversy has arisen between your orator and the defendants hereinbefore named, the said defendants claiming that it is the duty of your orator to pay over to them the sums by them, the said defendants, claimed respectively from the proceeds of said award now in the possession of your orator, and your orator claiming that it is the right and duty of your orator to have the facts relating to said claim and award inquired of by your honorable court, and if it shall be adjudged by your honorable court that the said award was obtained through fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the said defendant La Abra Silver Mining Company, or its agents, attorneys or assigns, to return the proceeds of said award to the said Republic of Mexico; that the said defendants have made persistent demands upon the Department of State and upon the Congress of your orator for the payment to them of said moneys, and that some of the said defendants have brought suits in the courts of your orator to compel such payment, and that, unless restrained by the judgment and decree of this honorable court, the said defendants will continue to

harass and annoy your orator with such demands and suits. . . . And that the said defendants and each and every one of them may, by the decree of this honorable court, be forever restrained and enjoined from setting up any claim to any part of said award or of the moneys now, as aforesaid, in possession of your orator. And that the said award on the claim of the said defendant La Abra Silver Mining Company may, by the decree of this honorable court, be declared to have been wholly obtained by means of false swearing and other false and fraudulent practices on the part of said defendant company, its agents, attorneys and assigns. And that your orator may have such other and further relief as the nature of your orator's case may require and as may be agreeable to equity and good conscience."

The La Abra Company and other defendants demurred to the bill on the following grounds:

That by the Constitution and laws of the United States the subject-matter of this suit was within the final and exclusive control of the Executive Department of the Government of the United States and not within the jurisdiction of any judicial tribunal;

That the questions whether the award of the Commission was obtained by fraud and whether the money received under it and remaining undistributed by the Secretary of State should be returned by the President of the United States could not properly be determined by any municipal court of either of the sovereign parties to the treaty of 1868, but were questions of a diplomatic or political nature determinable only by the Executive Department of the Government;

That the United States had not such an interest in the matters and things alleged in the bill as entitled it to maintain this suit or to have the relief asked;

That the Government of Mexico was the party pecuniarily interested in this suit, and that by failing to institute and prosecute suit against the alleged wrongdoers in the courts of the United States for the annulment of the award and the recovery of the moneys paid on account thereof, it had been guilty of laches and had forfeited all right to relief in equity;

consequently, the United States was not entitled to demand such relief for the benefit of or in the interest of Mexico;

That a mixed commission created and acting under and by virtue of such a treaty as that of July 4, 1868, between the United States and Mexico, was recognized by the law of nations and by the Constitution and laws of the United States and was in fact and law a court of exclusive and final jurisdiction, and its award could not be set aside, reopened or vacated by a municipal court of the United States, either in virtue of an act of Congress or otherwise, and that Congress could not grant a new trial in respect of matters so finally determined and concluded by international arbitration under such a treaty; but on the contrary, such an award could, on the part of the United States, be set aside, vacated or reopened only through its treaty-making power; and that the question presented by the bill, whether the award should be reopened or not on the grounds alleged, having been submitted to the treaty-making power and by it decided in the negative was *res judicata;*

That it appeared on the face of the bill that the question whether the award in favor of the La Abra Company was obtained in whole or part by fraud effectuated by means of false swearing or other corrupt and fraudulent practices was substantially the same question that was tried by the Commissioners, such fraud and fraudulent practices having been charged by the Mexican Agent and Commissioner at the trial; and that that question, on the disagreement of the two Commissioners in respect of the integrity of the witnesses and the credibility and weight of the evidence for and against the claim of the Company, was referred to the Umpire for decision, and having been decided by him was *res judicata* and could not be reëxamined or redetermined by this court;

That the act of Congress under which the suit was prosecuted was unconstitutional and inoperative on the further ground that it assumed to direct, control and bind the courts in determining the questions submitted for final adjudication to receive evidence and apply legal principles that were erroneous and wholly inadmissible according to law as administered

in the courts of the United States in like cases, and to prescribe to the court what weight and effect should be given to the evidence and how the court should reach the conclusion that the award was obtained in whole or in part through fraud;

That inasmuch and because the questions presented by the bill were of a political and diplomatic nature and not justiciable or fit and proper to be considered and finally determined by a municipal court, Congress could not impose upon the Court of Claims or upon the Supreme Court of the United States or upon the judges thereof, the trial and determination of those questions;

That the act of Congress in question was inoperative and void on the further ground that it was never approved by the President of the United States as required by law, the only alleged approval it ever received being on the 28th of December A.D. 1892, when Congress was not in session, both Houses of Congress having adjourned on the 22d of December A.D. 1892 to the 4th of January A.D. 1893; and,

That the bill did not state facts sufficient to constitute a cause of action or to authorize the granting of any relief.

The demurrer to the bill so far as it involved the jurisdiction of the Court of Claims and the charges of fraud was overruled, the opinion of the court being delivered by Judge Weldon. 29 C. Cl. 432, 484. The question whether the act of December 28, 1892, was so approved by the President as to become a law was determined in favor of the United States, upon the grounds stated in the opinion of the court previously delivered by Judge Nott, now Chief Justice of that court, in *United States* v. *Weil*, 29 C. Cl. 523.

The case having been prepared on the merits, the Court of Claims upon final hearing found that the award made by the Commission on the claim of the La Abra Company "was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other false and fraudulent practices on the part of said Company and its agents;" and it was adjudged that all claims in law and equity on the part of the Company, its legal representatives

and assigns, be forever barred and foreclosed in respect of the money received from the Republic of Mexico for or on account of such award. 32 C. Cl. 462, 520, 521.

An elaborate opinion of the Court of Claims, delivered by Judge Weldon, states fully the grounds on which the decree was based. That opinion concludes: "The court upon an examination of all the testimony, excluding such portions of it as in the opinion of the court are not competent, determines as a conclusion of fact that the La Abra Silver Mining Company did not abandon its mines in Mexico because of the interference of the people of Mexico and the public authorities of the Mexican Government, or either, but on the contrary that it abandoned its mines because they were unproductive and for the want of money to operate and work the same, and that the award made by the United States and the Mexican Mixed Commission in respect to the claim of the said La Abra Silver Mining Company was obtained as to the whole sum included therein by fraud effectuated by means of false swearing and other fraudulent practices upon the part of said company and its agents, and a decree will be entered barring and foreclosing all claim in law and equity on the part of said Company, or its agents, attorneys and assigns, to the money received from the Republic of Mexico for or on account of such award. Having decided that the Company was not compelled to abandon its mines because of the acts of the people of Mexico, unrestrained by the Mexican Government, and that it was not compelled to abandon the mines because of the unlawful interference of the Mexican authorities with the property and business of the Company, it is not necessary to consider the question of the value of the property of the Company at the time of the abandonment."

Chief Justice Nott dissented in part from the judgment. He was of opinion that the first three items in the award of the Umpire, above set forth, should stand, but that the fourth item was fraudulently exaggerated and should be reduced to $420.09, and the fifth, $100,000, rejected altogether as having been utterly overthrown by the evidence. 32 C. Cl. 521, 533.

Mr. Kennedy's Argument for La Abra Company.

From the judgment of the Court of Claims the present appeal was prosecuted.

Mr. Jeremiah M. Wilson for the La Abra Silver Mining Company.

Mr. William A. Maury, Special Assistant to the Attorney General, for the United States.

Mr. Crammond Kennedy (upon whose brief were *Mr. Wilson*, *Mr. John C. Fay* and *Mr. E. L. Renick*) closed for the La Abra Company. His brief contained the following points, supported by the accompanying citations of cases.

I. The Court of Claims has no jurisdiction over this matter, because it is not a "case" within the meaning of the Constitution, nor is it a "controversy" to which the United States is a party: citing 5 Wheat. App., Note 1, pp. 16 & 17; *Cohens* v. *Virginia*, 6 Wheat. 264; *Osborn* v. *Bank of the United States*, 9 Wheat. 738; *Georgia* v. *Stanton*, 6 Wall. 50; *Cherokee Nation* v. *Georgia*, 5 Pet. 1; *Murray* v. *Hoboken Land & Improvement Co.*, 18 How. 272; *Gordon* v. *United States*, 117 U. S. 697; *Chisholm* v. *Georgia*, 2 Dall. 419; *Smith* v. *Adams*, 130 U. S. 167; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518; *Curtner* v. *United States*, 149 U. S. 662, and cases cited; *Frelinghuysen* v. *Key*, 110 U. S. 63.

II. Neither the Court of Claims nor this court has jurisdiction of the bill, because it seeks to review and reverse the action heretofore taken by the President of the United States in a matter of international concern exclusively within his discretion and control: citing *Frelinghuysen* v. *Key*, *supra*; *De Bode* v. *The Queen*, 3 Clark's H. L. Cas. 459; *Williams* v. *Suffolk Ins. Co.*, 13 Pet. 415; *Milnor* v. *Metz*, 16 Pet. 221; *United States* v. *Diekelman*, 92 U. S. 520; *Boynton* v. *Blaine*, 139 U. S. 306; *Marbury* v. *Madison*, 1 Cranch, 137; *Jones* v. *United States*, 137 U. S. 202; *Kilbourn* v. *Thompson*, 103 U. S. 168; *Sinking Fund cases*, 99 U. S. 700; *Martin* v. *Mott*, 12 Wheat. 19; *Luther* v. *Borden*, 7 How. 1; *Murray* v. *Hoboken Land & Improvement Co.*, 18 How. 272; *White* v. *Hart*,

13 Wall. 646; *Phillips* v. *Payne*, 92 U. S. 130; *United States* v. *Lee*, 106 U. S. 196; *Underhill* v. *Van Cortlandt*, 2 Johns. Ch. 339.

III. Neither the Court of Claims nor this court has jurisdiction of this suit, because it requires a collateral inquiry to be made into the merits of an international award rendered by a tribunal of exclusive and final jurisdiction; citing *Meade* v. *United States*, 9 Wall. 691; *Comegys* v. *Vasse*, 1 Pet. 193; *Michaels* v. *Post*, 21 Wall. 398; *Noble* v. *Union River Logging Co.*, 147 U. S. 165; *Boynton* v. *Blaine*, 139 U. S. 306; *In re Sanborn*, 148 U. S. 222.

IV. The appellate jurisdiction of this court, if it exists, involves and requires a review of the facts, citing *Harvey* v. *United States*, 105 U. S. 671; *United States* v. *Old Settlers*, 148 U. S. 427; *In re Neagle*, 135 U. S. 1.

V. If this appeal is dismissed for want of jurisdiction the decree of the Court of Claims will be null and void, and unavailable for any purpose whatever, citing *Ex parte Siebold*, 100 U. S. 371; *United States* v. *Yale Todd*, reported in a note to *United States* v. *Ferreira*, 13 How. 40, 52, 54.

VI. The Court of Claims erred in not dismissing the bill when it found as a matter of fact that the Mexican Government, by the exercise of the same diligence which it exercised after the adjournment of the Commission, could have obtained the so-called newly discovered evidence, and used it while the claim was pending before the Commission; citing *Western Cherokee Indians* v. *United States*, 27 C. Cl. 1; *Dexter* v. *Arnold*, 2 Mason, 303; *Barnett* v. *Smith*, 5 Call, (Virginia) 98; *Todd* v. *Barlow*, 2 Johns. Ch. 551; *Livingston* v. *Hubbs*, 3 Johns. Ch. 124; *Lansing* v. *Albany Ins. Co.*, 1 Hopk. Ch. 102; *Allen* v. *Ranney*, 1 Conn. 569; *Dulin* v. *Caldwell*, 29 Georgia, 362; *Elliott* v. *Adams*, 8 Blackf. 103; *Cook* v. *McRoberts*, 5 Ky. Law Reporter, 764; *Aubel* v. *Ealer*, 2 Bin. 582; *Plymouth* v. *Russell Mills*, 89 Mass. 438; *Young* v. *Keighly*, 16 Ves. 349; *Poullain* v. *Poullain*, 79 Georgia, 11; *Kennedy* v. *Georgia State Bank*, 8 How. 586; *Life Ins. Co.* v. *Bangs*, 103 U. S. 782; *Wood* v. *Carpenter*, 101 U. S. 135; *Smith* v. *Clay*, 3 Brown Ch. 639; *Cooke* v. *United States*, 91 U. S. 389; *United States* v.

Bank of the Metropolis, 15 Pet. 377; *United States* v. *Hancock*, 30 Fed. Rep. 851; *United States* v. *Barker*, 12 Wheat. 559; *United States* v. *Bank of the Metropolis*, 15 Pet. 377; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518.

VII. The Court of Claims erred in not dismissing the bill on the ground that its allegations relate solely to issues passed upon by the Mixed Commission when it examined the claim of La Abra Company, and that the so-called newly discovered evidence is merely cumulative upon issues already tried, and does not show, or tend to show, the kind of fraud for which equity will grant relief: citing *Ross* v. *Wood*, 70 N. Y. 8; *Coltzhausen* v. *Kerting*, 29 Fed. Rep. 828; *Moffat* v. *United States*, 112 U. S. 24; *United States* v. *Flint*, 4 Sawyer, 52; *Livingston* v. *Hubbs*, 3 Johns. Ch. 124; *Southard* v. *Russell*, 16 How. 547.

VIII. The Company had in the award a vested right of property of which the bill seeks to deprive it without just compensation or without due process of law: citing *Gracie* v. *New York Insurance Co.*, 8 Johns. 237; *Comegys* v. *Vasse*, 1 Pet. 193; *Phelps* v. *McDonald*, 99 U. S. 298; *Emerson* v. *Hall*, 13 Pet. 409; *Milnor* v. *Metz*, 16 Pet. 221; *Mayer* v. *White*, 24 How. 317; *Bachman* v. *Lawson*, 109 U. S. 659; *United States* v. *Diekelman*, 92 U. S. 520; *United States* v. *Weld*, 127 U. S. 51; *Williams* v. *Heard*, 140 U. S. 529; *Frelinghuysen* v. *Key*, 110 U. S. 63; *Bank of Columbia* v. *Okely*, 4 Wheat. 235; *Giozza* v. *Tiernan*, 148 U. S. 657; *Duncan* v. *Missouri*, 152 U. S. 377; *Missouri Pacific Railway Co.* v. *Mackey*, 127 U. S. 205; *Leeper* v. *Texas*, 139 U. S. 462; *Hurtado* v. *California*, 110 U. S. 576; *Murray* v. *Hoboken Land & Improvement Co.*, 18 How. 272.

IX. The Court of Claims erred in not dismissing the bill on the ground that the alleged fraud was neither properly charged nor proved by the complainant.

Mr. Justice Harlan, after stating the case as above, delivered the opinion of the court.

In the light of this history of the claim of the La Abra

Company we proceed to the consideration of such of the principal questions presented in argument as are essential to the disposition of the case.

I. If, as insisted by the appellants, the above act of December 28, 1892, was not so approved by the President as to become under the Constitution a law, it would be unnecessary to consider any other question raised by the pleadings; for that act is the only basis of jurisdiction in the Court of Claims to render a judgment that would be conclusive between the parties and which could be reviewed by this court. We must therefore first consider whether that act is liable to the constitutional objection just stated.

The ground of this contention is that having met in regular session at the time appointed by law, the first Monday of December, 1892, and having on the 22d day of that month (two days after the presentation of the bill to the President) by the joint action of the two Houses taken a recess to a named day, January 4, 1893, Congress was not actually sitting when the President on the 28th day of December, 1892, by signing it formally approved the act in question. The proposition, plainly stated, is that a bill passed by Congress and duly presented to the President does not become a law if his approval be given on a day when Congress is in recess. This implies that the constitutional power of the President to approve a bill so as to make it a law is absolutely suspended while Congress is in recess for a fixed time. It would follow from this that if both Houses of Congress by their joint or separate action were in recess from some Friday until the succeeding Monday, the President could not exercise that power on the intervening Saturday. Indeed, according to the argument of counsel the President could not effectively approve a bill on any day when one of the Houses, by its own separate action, was legally in recess for that day in order that necessary repairs be made in the room in which its sessions were being held. Yet many public acts and joint resolutions of great importance together with many private acts have been treated as valid and enforceable which were approved by the President during the recesses of Congress covering the

Christmas holidays. In the margin will be found a reference to some of the more recent of those statutes.[1]

Do the words of the Constitution, reasonably interpreted, sustain the views advanced for appellant?

That instrument provides:

"The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." Art. I, § 4.

"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting." Art. I, § 5.

"Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration two thirds of that

[1] I. PUBLIC ACTS: 1862, 12 Stat. 632, c. 4; Id. c. 5; Id. c. 6; 1866, 14 Stat. 374, c. 5; 1868, 15 Stat. 266, c. 4; 1869, 16 Stat. 61, c. 4; Id. c. 5; 1872, 17 Stat. 400, c. 12; Id. 401, c. 13; Id. 404, c. 14; Id. c. 15; Id. c. 17; 1873, 18 Stat. 1, c. 3; 1874, 18 Stat. 293, c. 7; Id. c. 8; Id. c. 9; Id. 294, c. 10; 1874, 18 Stat. 294, c. 12; 1875, 19 Stat. 1, c. 1; 1879, 21 Stat. 59, c. 1; Id. c. 2; 1880, 21 Stat. 311, c. 4; Id. 312, c. 5; Id. c. 6; Id. c. 7; Id. c. 8; Id. 313, c. 9; Id. c. 10; 1884, 23 Stat. 280, c. 7; 1886, 24 Stat. 353, c. 9; 1887, 24 Stat. 354, c. 11; Id. c. 12; Id. c. 13; Id. 355, c. 14; Id. 356, c. 15; Id. 358, c. 16; 1888, 25 Stat. 638, c. 7; Id. c. 8; 1889, 25 Stat. 639, c. 18; 1892, 27 Stat. 409, c. 14; Id. 410, c. 15; Id. 412, c. 16; 1894, 28 Stat. 735, c. 8; Id. 596, c. 9; Id. c. 10; Id. c. 11; Id. 597, c. 12; Id. 599, c. 14; Id. c. 15; 1897, 30 Stat. 226, c. 3.

II. JOINT RESOLUTIONS: 1869, 16 Stat. 368, No. 5; Id. No. 6; 1872, 17 Stat. 637, No. 1; 1878, 20 Stat. 487, No. 1; Id. No. 2; Id. No. 3; 1883, 23 Stat. 265, No. 3; 1885, 24 Stat. 339, No. 2; Id. No. 3; 1893, 28 Stat. 577, No. 7; 1894, 28 Stat. 967, No. 2.

III. PRIVATE ACTS: 1873, 18 Stat. 529, c. 2; 1874, 18 Stat. 529, c. 4; 1879, 21 Stat. 531, c. 3; 1880, 21 Stat. 601, c. 11; Id. c. 12; Id. 602, c. 13; Id. c. 14; 1884, 23 Stat. 615, c. 6; 1885, 24 Stat. 653, c. 1; Id. c. 2; 1886, 24 Stat. 881, c. 10; 1887, 24 Stat. 882, c. 17; Id. c. 18; Id. 883, c. 19; Id. 884, c. 20; 1888, 25 Stat. 1251, c. 9; Id. c. 10; Id. 1252, c. 11; Id. c. 12; Id. c. 13; Id. c. 14; Id. c. 15; Id. 1253, c. 16; Id. c. 17; 1894, 28 Stat. 1022, c. 13; Id. c. 16; Id. c. 17.

House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law." Art. I, § 7.

"Every order, resolution or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a case of adjournment,) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill." Art. I, § 8.

It is said that the approval by the President of a bill passed by Congress is not strictly an executive function, but is legislative in its nature; and this view, it is argued, conclusively shows that his approval can legally occur only on a day when both Houses are actually sitting in the performance of legislative functions. Undoubtedly the President when approving bills passed by Congress may be said to participate in the enactment of laws which the Constitution requires him to execute. But that consideration does not determine the question before us. As the Constitution while authorizing the President to perform certain functions of a limited number that are legislative in their general nature does not restrict the exercise of those functions to the particular days on which the two Houses of Congress are actually sitting in the transaction of public business, the court cannot impose such a restriction upon the Executive. It is made his duty by the Constitution to examine and act upon every bill passed by Congress. The time within which he must approve or dis-

approve a bill is prescribed. If he approve a bill, it is made his duty to sign it. The Constitution is silent as to the time of his signing, except that his approval of a bill duly presented to him — if the bill is to become a law merely by virtue of such approval — must be manifested by his signature within ten days, Sundays excepted, after the bill has been presented to him. It necessarily results that a bill when so signed becomes from that moment a law. But in order that his refusal or failure to act may not defeat the will of the people, as expressed by Congress, if a bill be not approved *and* be not returned to the House in which it originated within that time, it becomes a law in like manner as if it had been signed by him. We perceive nothing in these constitutional provisions making the *approval* of a bill by the President a nullity if such approval occurs while the two Houses of Congress are in recess for a named time. After a bill has been presented to the President, no further action is required by Congress in respect of that bill unless it be disapproved by him and within the time prescribed by the Constitution be returned for reconsideration. It has properly been the practice of the President to inform Congress by message of his approval of bills, so that the fact may be recorded. But the essential thing to be done in order that a bill may become a law by the approval of the President is that it be signed within the prescribed time after being presented to him. That being done, and as soon as done, whether Congress is informed or not by message from the President of the fact of his approval of it, the bill becomes a law, and is delivered to the Secretary of State as required by law.

Much of the argument of counsel seems to rest upon the provision in relation to the final adjournment of Congress for the session, whereby the President is prevented from returning, within the period prescribed by the Constitution, a bill that he disapproves and is unwilling to sign. But the Constitution places the approval and disapproval of bills, as to their becoming laws, upon a different basis. If the President does not approve a bill, he is required within a named time to send it back for consideration. But if by its action, after the

presentation of a bill to the President during the time given him by the Constitution for an examination of its provisions and for approving it by his signature, Congress puts it out of his power to return it, not approved, within that time to the House in which it originated, then the bill falls, and does not become a law.

Whether the President can sign a bill after the final adjournment of Congress for the session, is a question not arising in this case, and has not been considered or decided by us. We adjudge — and touching this branch of the case adjudge nothing more — that the act of 1892 having been presented to the President while Congress was sitting and having been signed by him when Congress was in recess for a specified time, but within ten days, Sundays excepted, after it was so presented to him, was effectively approved, and immediately became a law, unless its provisions are repugnant to the Constitution.

II. It is said that the present proceeding based on the act of 1892 is not a "case" within the meaning of that clause of the Constitution declaring that the judicial power of the United States shall extend to all cases in law and equity arising under that instrument, the laws of the United States, or treaties made or which shall be made under their authority. Art. III, § 2. This Article, as has been adjudged, does not extend the judicial power to every violation of the Constitution that may possibly take place, but only "to a case in law or equity, in which a right, under such law, is asserted in a court of justice. If the question cannot be brought into a court, then there is no case in law or equity, and no jurisdiction is given by the words of the Article. But if, in any controversy depending in a court, the cause should depend on the validity of such a law, that would be a case arising under the Constitution to which the judicial power of the United States would extend." *Cohens* v. *Virginia*, 6 Wheat. 264, 405. In the same case, Chief Justice Marshall declared a suit to be the prosecution by a party of some claim, demand or request in a court of justice for the purpose of being put in possession of a *right* claimed by him and of which he was deprived.

Referring to the provision defining the judicial power of the United States, the court in a subsequent case said: "This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States, when any question respecting them shall receive such a form that the judicial power is capable of acting on it. That power is capable of acting only when a subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws and treaties of the United States." *Osborn* v. *United States Bank*, 9 Wheat. 738, 819. In *Murray* v. *Hoboken*, 18 How. 272, 284, this court said that Congress can neither "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination." But in the same case it was observed by Mr. Justice Curtis, speaking for the court, that "there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." Of like import was the judgment in *Smith* v. *Adams*, 130 U. S. 167, 173, in which the court said that the terms "cases" and "controversies" in the Constitution embraced "the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcements of rights, or the prevention, redress or punishment of wrongs."

The principles announced in the above cases are illustrated by the opinion prepared by Chief Justice Taney for the case of *Gordon* v. *United States*, 2 Wall. 561, and printed in 117 U. S. 697. That case was brought to this court from the Court of Claims, and related to a demand asserted against the United States. The principal question was whether this court had jurisdiction to review the final order made in the court

below. The Chief Justice died before the case was decided and the opinion prepared by him in recess was not formally accepted. But if the court approved his views, as it undoubtedly did, the appeal was dismissed upon the ground that Congress could not authorize or require this court to express an opinion on a case in which its judicial power could not be exercised, and when its judgment would not be final and conclusive upon the rights of the parties. "The award of execution," Chief Justice Taney said, "is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award, the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. It would be merely an opinion, which would remain a dead letter, and without any operation upon the rights of the parties, unless Congress should at some future time sanction it, and pass a law authorizing the court to carry its opinion into effect. Such is not the judicial power confided to this court in the exercise of its appellate jurisdiction; yet it is the whole power that the court is allowed to exercise under this act of Congress." In a more recent case this court dismissed an appeal from a final order made in the Court of Claims in virtue of a particular statute, observing: "Such a finding is not made obligatory on the department to which it is reported — certainly not so in terms, and not so, as we think, by any necessary implication. We regard the function of the Court of Claims, in such a case, as ancillary and advisory only. The finding or conclusion reached by that court is not enforceable by any process of execution issuing from the court, nor is it made by the statute the final and indisputable basis of action either by the department or by Congress." *In re Sanborn*, 148 U. S. 222, 226; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 483.

Under the principles established in the cases above cited, the objections urged against the jurisdiction of the Court of Claims and of this court cannot be maintained, if the present proceeding involves a right which in its nature is susceptible of judicial determination, and if the determination of it by

the Court of Claims and by this court is not simply ancillary or advisory but is the final and indisputable basis of action by the parties.

The money in the hands of the Secretary of State was paid to the United States by Mexico pursuant to the award of the Commission. That tribunal dealt only with the two Governments, had no relations with claimants, and could take cognizance only of claims presented by or through the respective governments. No claimant, individual or corporate, was entitled to present any demand or proofs directly to the Commission. No evidence could be considered except such as was furnished by or on behalf of the respective governments. While the claims of individual citizens presented by their respective governments were to be considered by the Commission in determining amounts "the whole purpose of the convention was to ascertain how much was due from one government to the other on account of the demands of their respective citizens." And "each government, when it entered into the compact under which the awards were made, relied on the honor and good faith of the other for protection so far as possible against frauds and impositions by the individual claimants." *Frelinghuysen* v. *Key*, above cited. As between the United States and Mexico, indeed as between the United States and American claimants, the money received from Mexico under the award of the Commission was in strict law the property of the United States, and no claimant could assert or enforce any interest in it so long as the Government legally withheld it from distribution.

When the La Abra Company asked the intervention of the United States it did so on the condition imposed by the principles of comity recognized by all civilized nations, that it would act in entire good faith, and not put the government whose aid it sought in the attitude of asserting against the Mexican Republic a fraudulent or fictitious claim; consequently the United States, under its duty to that Republic, was required to withhold any sum awarded and paid on account of the Company's claim if it appeared that such claim was of that character. As between the United States and the

Company, the honesty or genuineness of the latter's claim was open to inquiry in some appropriate mode for the purpose of fair dealing with the government against which such claim was made through the United States. We so adjudged in the *Key case.* The United States assumed the responsibility of presenting the La Abra claim and made it its own in seeking redress from the Mexican Republic. But from such action on its part no contract obligations arose with the La Abra Company "to assume their frauds and to collect on their account all that, by their imposition of false testimony, might be given in the awards of the Commission." *Boynton* v. *Blaine,* above cited.

These considerations make it clear that the act of 1892 is not liable to the objection that it subjected to judicial determination a matter committed by the Constitution to the exclusive control of the President. The subject was one in which Congress had an interest, and in respect to which it could give directions by means of a legislative enactment. The question for the determination of which the present suit was directed to be instituted was whether the award made by the Commission in respect to the claim of the La Abra Company was obtained as to the whole sum included therein or as to any part thereof, by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the Company, or its agents, attorneys or assigns. It cannot, we think, be seriously disputed that the question whether fraud has or has not been committed in presenting or prosecuting a demand or claim before a tribunal having authority to allow or disallow it is peculiarly judicial in its nature, and that in ascertaining the facts material in such an inquiry no means are so effectual as those employed by or in a court of justice. The Executive branch of the Government recognized the inadequacy for such an investigation of any means it possessed, and declared that Congress by its "plenary authority" ought not only to decide whether such an investigation should be made, but provide an adequate procedure for its conduct and prescribe the consequences to follow therefrom. The suggestion that the question of fraud be committed to the determination of a judicial

tribunal first came from the Executive branch of the Government. Undoubtedly Congress, having in view the honor of the Government and the relations of this country with Mexico, could have determined the whole question of fraud for itself, and by a statute, approved by the President, or which being disapproved by him was passed by the requisite constitutional vote, have directed the return to Mexico, the other party to the award, of such moneys as had been paid into the hands of the Secretary of State. It is also clear that in the absence of any statute suspending the distribution of such moneys, the President could have ignored the charges of fraud and ordered the distribution to proceed according to the terms of the treaty and the award. But it does not follow that Congress was without power, no distribution having been made, to control the whole matter by plenary legislation.

It has been adjudged that Congress by legislation, and so far as the people and authorities of the United States are concerned, could abrogate a treaty made between this country and another country which had been negotiated by the President and approved by the Senate. *Head Money cases*, 112 U. S. 580, 599; *Whitney* v. *Robertson*, 124 U. S. 190, 194; *Chinese Exclusion case*, 130 U. S. 581, 600; *Fong Yue Ting* v. *United States*, 149 U. S. 698, 721. It is therefore difficult to perceive any ground upon which to question its power to make the distribution of moneys in the hands of the Secretary of State — representing in that matter the United States and not simply the President — depend upon the result of a suit by which the United States would be bound and in which the claimants to the fund in question could be heard as parties, and which was to be brought in a court of the United States by its authority, for the purpose of determining whether the La Abra Company, its agents or assigns had been guilty of fraud in the matter of the claim that it procured to be presented to the Commission. The act of 1892 is to be taken as a recognition, so far as the United States is concerned, of the legal right of the Company to receive the moneys in question unless it appeared upon judicial investigation that the

United States was entitled, by reason of fraud practised in the interest of that corporation, to withhold such moneys from it. Here then is a matter subjected to judicial investigation in respect of which the parties assert *rights* — the United States insisting upon its right under the principles of international comity to withhold moneys received by it under a treaty on account of a certain claim presented through it before the Commission organized under that treaty in the belief, superinduced by the claimant, that it was an honest demand; the claimant insisting upon its absolute legal right under the treaty and the award of the Commission, independently of any question of fraud, to receive the money and disputing the right of the United States upon any ground to withhold the sum awarded. We entertain no doubt these rights are susceptible of judicial determination within the meaning of the adjudged cases relating to the judicial power of the courts of the United States as distinguished from the powers committed to the Executive branch of the Government.

It remains, in our consideration of the question of jurisdiction, to inquire whether the judgment authorized by the act of 1892 to be rendered would be a final, conclusive determination, as between the United States and the defendants, of the rights claimed by them respectively, or only ancillary or advisory. In our opinion the act of Congress authorized a final judgment of the former character and therefore the judgment of the Court of Claims is reviewable by this court in the exercise of its appellate judicial power. If our judgment should be one of affirmance then the La Abra Company, and its legal representatives or assigns are barred of all claim, legal or equitable, to the money received by the United States from the Republic of Mexico on account of the award of the Commission. Such a determination would rest upon the broad ground that the United States in its efforts to protect the alleged rights of an American corporation had been the victim of fraud upon the part of that corporation, its agents or assigns, and was in law relieved from any responsibility to that corporation touching the claim in question

or the moneys received on account of it. If, on the other hand, this court should find that the charges of fraud were not sustained or were disproved, and reverse the decree of the Court of Claims, then it would become the absolute legal duty of the Secretary of State to proceed in the distribution of the moneys in his hands according to the terms of the award. It was competent for Congress by statute to impose that duty upon him and he could not refuse to obey the mandate of the law.

Much was said in argument about the interference by the act of 1892 with the discharge by the President of his constitutional functions in connection with matters involved in the relations between this country and the Republic of Mexico. For reasons already given this contention cannot be sustained. It is without support in anything done or said by the eminent jurists who have presided over the Department of State since the controversy arose as to the integrity of the claim made by the La Abra Company. On the contrary, those officers have uniformly insisted that the authority of Congress was plenary to determine whether the award in respect of those claims was procured by fraud practised on the part of that Company and whether in that event the Company should be barred of any claim to the moneys received from the Republic of Mexico. Upon this question the legislative and executive branches of the Government have acted in perfect harmony. The question arises under the Constitution of the United States and a treaty made by the United States with a foreign country, is judicial in its nature, and one to which the judicial power of the United States is expressly extended. Both branches of the Government were concerned in the enactment subjecting that question to judicial determination, and it cannot properly be said that the President by approving the act of 1892 or by recognizing its binding force surrendered any function belonging to him under the supreme law of the land.

It was also said in argument that the act of Congress in some way — not clearly defined by counsel — was inconsistent with the principles underlying international arbitration, a

mode for the settlement of disputes between sovereign States that is now more than ever before approved by civilized nations. We might well doubt the soundness of any conclusion that could be regarded as weakening or tending to weaken the force that should be attached to the finality of an award made by an international tribunal of arbitration. So far from the act of Congress having any result of that character, the effect of such legislation is to strengthen the principle that an award by a tribunal acting under the joint authority of two countries is conclusive between the governments concerned and must be executed in good faith unless there be ground to impeach the integrity of the tribunal itself. The act of 1892 is a recognition of the principle that "international arbitration must always proceed on the highest principles of national honor and integrity." *Frelinghuysen* v. *Key*, above cited. By that act the United States declares that its citizens shall not through its agency reap the fruits of a fraudulent demand which they had induced it to assert against another country. Such legislation is an assurance in the most solemn and binding form that the Government of this country will exert all the power it possesses to enforce good faith upon the part of citizens who, alleging that they have been wronged by the authorities of another country, seek the intervention of their Government to obtain redress.

We hold that the act of 1892 is not unconstitutional upon any of the grounds adverted to; that the Court of Claims had jurisdiction to render the decree in question; that such decree, unless reversed, is binding upon the parties to this cause; and that this court, in the exercise of its appellate power, has authority to reëxamine that decree and make such order or give such direction as may be consistent with law.

III. The Court of Claims did not make a finding of facts. It is therefore contended on behalf of the United States that the appeal provided for by the act of 1892 does not authorize a reëxamination of the evidence, as in equity cases generally; and that the present case comes within the rule prescribed by this court under the authority of the act of March 3, 1863, 12 Stat. 766, c. 92; Rev. Stat. § 708, providing that in connec-

tion with any final judgment rendered in the Court of Claims there shall be a finding of facts.

In its opinion on the demurrer to the bill the Court of Claims said: "The directions of the statute [the act of 1892] as to the character of the decree seem to be without doubt, and as the court in the trial of the cause is in the exercise of equity powers, it would find no difficulty in entering such a decree as will carry out the purpose of the statute." 29 C. Cl. 432, 522. In its opinion on the final hearing of the case the court below said: "This being a proceeding in equity, this court is not called upon to settle the facts by the finding of ultimate facts for the consideration of the Supreme Court, but the whole record is transmitted to that court, and the case is to be determined in the Supreme Court upon the law as it shall be adjudged and upon the facts as they shall be found by the decision of the Supreme Court. That would be so in a case of this kind arising under the ordinary jurisdiction of the Court of Claims, but it is especially true from the provisions of the statute giving us the special jurisdiction to determine the issues of this proceeding. The statute provides for a decree, and not for a money judgment." After citing *Harvey* v. *United States*, 105 U. S. 671, the court continued: "All the testimony being before the Supreme Court for the purpose of settling ultimate facts from such testimony, we have confined the limits of this opinion to questions of law, and the determination of the ultimate fact which is, whether the Company was compelled to abandon its mines because of the acts of the people of Mexico and the Mexican authorities." 32 C. Cl. 462, 515, 516.

In our judgment the Court of Claims properly interpreted the act of 1892. While that act does not, in express words, direct the Attorney General to institute a suit "in equity" or declare that this court on appeal should reëxamine the entire case on both law and facts, a suit of that character was contemplated when Congress invested the Court of Claims with full jurisdiction to make "all interlocutory and final decrees therein as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by injunc-

tion or any proper final process," and gave either party the right to appeal to this court from the final decision within ninety days "from the rendition of such final decree." This construction is not inconsistent with the direction that the Court of Claims should in all respects proceed in the suit brought by the Attorney General "according to law and the rules of said court, so far as the same are applicable," and that the appeal from its final decree should be taken "under the rules of practice which govern appeals from said court." Looking at the words of the act of 1892 and the peculiar nature of the important questions involved in any suit brought under it, we cannot suppose that Congress intended to relieve this court from the responsibility of determining for itself and upon its own view of all the evidence what were the ultimate facts bearing upon the inquiry as to the alleged fraud in bringing about the award in question. The present proceeding, we think, comes within the principle announced in *Harvey* v. *United States*, 105 U. S. 671, 691, where it was said that the rule in regard to findings of fact in the Court of Claims had no reference to a case "of equity jurisdiction conferred in a special case by a special act" in which "this court must review the facts and the law as in other cases in equity appealed from other courts." This principle was approved and applied in *United States* v. *Old Settlers*, 148 U. S. 427, 428, 465.

We are of opinion that the appeal provided for in the act of 1892 was one under which it is our duty to determine the rights of the parties as in a case in equity. The provision in the act expressly empowering the court below in the event it was found that the award in question was fraudulently obtained as to the whole or any part of the sum included therein by the La Abra Company, to bar and *foreclose* all claims in law or *equity* on its part, together with the provision authorizing the court to render such *interlocutory* and *final decrees* as the evidence may warrant, according to the principles of equity and justice, and to enforce the same by *injunction*, imports such jurisdiction in the Court of Claims as may be ordinarily exercised by courts of equity as distinguished from courts of law,

and as entitled that court to send up the entire evidence for examination here.

IV. We come now to consider in the light of all the evidence whether the award in question was obtained by fraud effectuated by means of false swearing or other false and fraudulent practices on the part of the La Abra Company, its agents, attorneys or assigns.

In view of the exceptional character of the case, and that there may be no ground to misapprehend the basis upon which our decree will rest, we deem it appropriate to set forth in this opinion the principal facts bearing on the issue of fraud.

In its memorial presented to the Commission through the United States, the La Abra Company referred to the mines in Mexico of which it asserted ownership as being of extraordinary richness and historical interest.

It was stated in the memorial that after becoming the proprietor of those mines the Company with all possible dispatch proceeded to the working of them, and to that end sent intelligent agents to Mexico, employed miners, machinists and laborers, purchased mules, equipments, provisions, the best and most improved machinery which were transported on the backs of mules to the mines at heavy cost, and incurred other expenses necessary to the most extensive and successful working of the property; that they expended in the purchase of the mines and in their working the sum of three hundred and three thousand dollars, and as the result of this large expenditure were getting out a large amount of the richest ore and were in the act of realizing the extraordinary profit of a million dollars per annum when, by reason of unfriendly and illegal acts of the Mexican officials, they were compelled to abandon their mines, all their machinery and other property and over a thousand tons of ore obtained by the Company from the mines; that intense prejudice was constantly manifested by the civil and military authorities and by the Mexican populace against all Americans, and especially against those engaged in mining, this prejudice being intensified by the belief that the United States intended to annex Durango, Sinaloa and other States to its territory, and that the La

Abra Company was assisting in that purpose; that the property of the Company and the persons and the lives of employés were threatened by the authorities and the people, and its superintendent was arrested without having given cause for offence, and fined and imprisoned without trial and without being informed of any offence; that when he applied to the authorities civil and military in Durango and Sinaloa for protection, his request was harshly refused, and acts of violence, encouraged by the authorities, were committed against the property and employés of the Company, which so alarmed the employés that it was impossible to keep them at work; that the authorities repeatedly seized its mule trains loaded with provisions and appropriated the same to their use, and large quantities of ore from the mines were taken from the Company, its employés being deterred by threats from resisting such spoliation; that things finally got to such a pass that an employé of the Company in charge of one of its trains was killed by the Liberal forces and the train seized, and that was made matter of boast by the Mexican officials, and the authorities at San Dimas openly avowed their purpose to drive out all American mining companies and get their property; that the one motive of this persecution was to compel the Company to leave, and thus permit the Mexicans to obtain possession of their valuable property; and that from such persecution, outrages and insecurity it became impossible for the Company to work the mines and they were abandoned as stated, such enforced abandonment utterly ruining the Company.

The memorial concluded by alleging that when the Company acquired the La Abra mines, though they were of immense richness, it was impossible from their neglected state to extract ores except by heavy expenditures; that in connection with the principal mines were buildings of great cost and other permanent structures, but owing to the abandoned condition of the mines they were of no present value; that the large expenditures made by the Company at the mines gave a very great value to them and to the buildings and other permanent structures, and they became and were of the value of

$1,000,000; that the Company was obliged to abandon one thousand tons of silver ore already extracted, worth $500,000, which it was impossible for them to bring away, and which upon the abandonment of the mines were carried off by the Mexicans and lost to the Company; that when such abandonment occurred the Company was extracting large quantities of ore, and the profits would have been great if it had been permitted to work them; that the Company estimated its clear annual profits which it could have obtained from the mines at $1,000,000 per annum; that in addition to the expenditures in the mines as aforesaid, the Company had expended $30,000 in conducting its business; and that the mines and the improvements and machinery therein had become wholly lost to the Company, and its losses and damages because of the enforced abandonment were $3,000,030.

The memorial also stated that the Company had never received any indemnity for its claim, and its prayer was for an award against the Mexican Government for its damages with interest thereon.

It may be here observed that this memorial contained no hint or intimation that the abandonment by the Company of mining operations in Mexico was due in any degree to its inability or failure to supply the money necessary for the development of its property and to meet the expenses of mining operations.

That the La Abra Company ceased to work its mines in Mexico and practically abandoned them is undoubtedly true. But is it true that they did so in consequence of violence and outrages committed against it by the public authorities of the Republic of Mexico? The United States insists upon a negative answer to this question. It contends that the Company ceased to work its mines and abandoned its property for reasons wholly disconnected from anything done or omitted to be done by the authorities of Mexico and asserts that the La Abra Company suspended operations in that country not only because of want of funds necessary to develop its property, but because of the belief of stockholders that the mines were not of sufficient value to justify a larger expenditure of money;

and that it was a pure afterthought to attempt by the agency of the United States to fasten upon Mexico responsibility for the losses incurred by the Company in the abandonment of its mining property.

The connection of the La Abra Company with these mines may be briefly stated as follows: In 1865 one Hardy went to the city of New York for the purpose of selling mining property in Mexico which he claimed to own or control and which constitutes part of the property now in question. He there met a person named Garth and exhibited to him some specimens of ore which he stated were taken from that property. Among those whose attention had been called to those mines — precisely at what time or in what way does not appear — was a person named Bartholow. Garth and Bartholow were sent to Mexico by New York capitalists to examine the mines. They were accompanied by Hardy and were joined by one who was reputed to be a California mining expert, named Griffith. The party arrived at the mines near Tayoltita, Mexico, in June, 1865. In his deposition taken June 22, 1874, Bartholow stated that after examining the property several mines with their improvements were purchased from the owners, Don Juan Castillo de Valle and Ygnacio Manjarrez, at the price of $57,000, gold coin. Twenty-two twenty-fourths of the La Abra mine, lying immediately contiguous to the mines purchased from de Valle and Manjarrez, were purchased from Hardy and one Luce, at the price of $22,000, gold coin. In the same deposition Bartholow stated: "We then reported said purchases, and all the facts exactly as they existed there, to said gentlemen, capitalists, all of whom were intimate acquaintances, and some of them personal friends and relatives of said Garth and myself, and thereupon they formed said Abra Silver Mining Company, and organized the same under the general mining laws of the State of New York, to work said mines in Mexico, which organization was perfected on the eighteenth day of November, 1865, and said mines and haciendas were duly conveyed to said company by said Garth and myself, we being amongst the very largest stockholders of the same. . . . After receiving the legal titles to all of

said property, as we did, without any reserved interest to said former owners, the said Garth immediately returned to New York, and I proceeded to the city of San Francisco, California, and I there purchased, for and in the name of said Company, as the same had been determined upon by said Garth and myself, a ten-stamp mill, and other machinery and modern appliances for running or working the same at said mines; and I also purchased provisions and supplies of every kind and description, needed by the officers and employés, which could not be purchased to advantage in Mexico, and I shipped the same to the port of Mazatlan, Sinaloa, by steamships and sailing vessels, and from there said machinery and supplies were transported by mule trains, over the mountains of Sinaloa and Durango, to the said hacienda of La Abra Company, San Nicolas, near to Tayoltita, and I commenced, as superintendent, the work of erecting a mill house for said stamp mill, a new hacienda adjoining the old hacienda, San Nicolas, outhouses for officers and employés, and the opening of said mines, with general preparations for carrying on said mining enterprise on a large scale, as was anticipated by said stockholders. In the meantime the said Garth and myself had reported to said stockholders, at New York, our entire action and conduct in the matter of said purchases and preparations, which reports were accepted and fully approved by said stockholders, who, upon the organization of said Company, appointed me as the first superintendent of their said mining operations, and requested me to remain as such superintendent until said works were fairly started, and in successful operation. I had already requested said stockholders, and subsequently the Company, after its organization, to appoint a superintendent to relieve me, as my business in St. Louis was of greater importance to me than my interest in the mining enterprise. My successor was appointed, and relieved me at said mines in the month of May, 1866."

The successor of Bartholow as superintendent in charge of the mining property was Colonel Julian A. De Lagnel, formerly an officer in the Army of the United States. He had had no experience in mining, but was recognized by all —

and properly, according to the evidence in this record — as a gentleman of integrity and force of character. He left New York for the mines in March, 1866, and arrived there in April of that year. He discharged the duties of superintendent for about one year and until the spring of 1867 and was succeeded by a person named Exall. The latter remained in charge of the mines until about March or April, 1868, when he abandoned the property and returned to New York, and all work at the mines ceased. When Exall left Mexico for New York, the property was placed by him in charge of one Granger. The principal witnesses before the Commission on behalf of the La Abra Company were Bartholow and Exall. The Company did not take the testimony of De Lagnel, giving as a reason for not doing so the impossibility of ascertaining his whereabouts. That excuse is not sustained by the record before us.

During the entire period when Bartholow, De Lagnel and Exall were respectively superintendents at the mines, Garth was the executive officer and manager of the affairs of the Company at the city of New York, representing it in all correspondence with the different superintendents. Whatever omissions of duty were fairly chargeable against the Mexican authorities in respect of the Company's property necessarily occurred after Bartholow took charge at the mines and before Exall returned to New York. During that period of about three years there was a regular correspondence by letter between the respective superintendents and Garth in his capacity as representative of the Company at its chief office in New York. Neither the Commissioners nor the Umpire had those letters before them when the La Abra claim was examined by them. After the award in question, the letter-impression book in which the letters or reports of the superintendents were originally copied was discovered by Mexico and brought by its diplomatic representatives to the attention of the Department of State. Of the identity of that book, as containing the correspondence between the La Abra Silver Mining Company and its several Superintendents at the mines, no doubt can exist although it is insisted that some letters do

not now appear in the book that were once in it. It was, we suppose, principally the evidence furnished by that correspondence that induced Secretary Evarts to report to the President that the honor of the United States required that the La Abra claim should be further investigated in order to ascertain whether its Government had not been induced to enforce against a friendly power claims of American citizens based upon or exaggerated by fraud and false swearing.

That there was before the Commission some evidence which, uncontradicted or unexplained, tended to support the allegations of outrage, violence and neglect of duty on the part of Mexican authorities may be admitted. That evidence came largely from Bartholow and Exall. But it is manifest that the Umpire could not possibly have reached the conclusion he did in respect to the La Abra claim if the letter book, giving detailed accounts from time to time of all that occurred at the mines while in charge of Bartholow, De Lagnel and Exall, had been in evidence when he rendered his decision. The reports made by the Company's superintendents as to the management of the property and of what occurred at the mines are utterly inconsistent with the statement that the Company's abandonment of mining operations and of its property was in consequence of the misconduct and violence of the Mexican authorities. Placing this letter book beside the evidence adduced before the Commission and the Umpire by the La Abra Company, it is clear that the material transactions and incidents which the Company's witnesses before the Commission detailed as establishing the charge against the Mexican authorities were misstated or grossly exaggerated. It now appears that much of the evidence upon which the Commission must have rested its conclusion was wholly without foundation and had its origin in a fraudulent purpose or plan to make it appear that the public authorities of Mexico were chargeable with a responsibility that could not fairly or justly be imputed to them.

Let us see how far this general statement is justified by the evidence adduced in the present case when examined in connection with the testimony brought before the Commission.

In the memorial presented by the Company through the United States the principal specification of the outrages alleged to have been committed by the Mexican authorities was that "one of the personnel of the Company, in charge of one of its trains, was openly killed by the Liberal forces, and the train seized, and that was made matter of boast by the Mexican officials, and the authorities at San Dimas openly avowed their purpose to drive out all American mining companies and get their property." The particular matter here referred to was that of the killing during the superintendency of Bartholow of William Grove, an employé of the Company. We have already referred to the deposition of Bartholow taken June 22, 1874. It seems that prior to that date the Mexican Government had taken the deposition or affidavit of Pio Quinto Nunez and Cepomuceno Manjarrez. Nunez, who resided in the district where the mines were situated, among other things testified "that it is not true that these Americans abandoned their enterprise on account of the acts of Mexican officials, and that it is equally false that either the civil or military authorities, or the inhabitants of the district, made any prejudicial opposition to them, as they have alleged they did; that the deponent has never seen or heard it said that any superintendent was imprisoned, and much less does he believe that such superintendent complained to the civil or military authorities in Durango and Sinaloa, and was denied the protection thus solicited; that he has never known that the authorities have countenanced acts of violence against the interests and employés of the Company; that it is false that the authorities, as the Company allege, took possession of their mules and provisions, and appropriated the same to their own use; that the Company never had any ore taken from them, as they affirm, since that which they took out of their mines still exists, as before stated; nor have their employés ever been threatened by any Mexican with intention to rob them; that the Company has no reason to complain, in any way, against Mexico, because they did not abandon their operations on account of the Mexicans, but because they themselves did not understand how to carry on the work-

ing of the mines, as is proven by the unproductive manner in which they worked; that this is the cause of their abandonment, and not, as they say, from any want of security; that the reparation, which the Company claims of Mexico, is not founded in justice, because the allegations upon which it is based are false." Manjarrez, residing in the same district, testified to the same effect.

Now, when Bartholow's deposition was taken in 1874 he was asked whether the statements made by Nunez and Manjarrez and other witnesses for Mexico were true. He answered in the negative, saying they were wholly untrue. In response to an inquiry as to the circumstances of the murder of one of the employés of the Company in charge of mule trains or supplies, he then testified: "His name was William Grove; he was one of my most valued employés; he was murdered between the town of San Ignacio and Tayoltita; I afterwards recovered his body; it was badly mutilated by gunshot wounds, evidently produced by a volley of musketry. This occurred in January or February, 1866. At the time of the murder Mr. Grove was in the employ of the Abra Company as quartermaster, and was intrusted with the charge of one of our mule trains, used for transportation of supplies. Mr. Grove was murdered by soldiers of the Republican army. The train that was the special charge of Mr. Grove was taken possession of by the military authorities, with its entire outfit and supplies, all of which were totally lost to the Abra Company. The mule trains owned and worked by the Company, at that time, were three in number, aggregating about one hundred and fifty mules; the train so taken was one of the three here mentioned."

This was a very imposing statement in support of the charge in the Company's memorial as to the murder of one of its employés and the seizure of its property by the Mexican authorities. But the charge had no foundation in fact, if Bartholow's account of the affair as contained in his report made to the Company when all the circumstances were fresh in his mind was true. In his report to Garth as the representative of the La Abra Company, of March 7, 1866, — which

report appears in the letter book above referred to, — he said: "In my last letter I informed you that one of my employés, Wm. Grove, Esq., formerly of Saline Co., Mo., was missing, and I feared had been waylaid and murdered; since then my worst fears have been realized, for after a search of two weeks his body was found buried in the sand on the bank of the Piastla River, some ten miles above the mouth of Candalaro Creek, near where he had been murdered. At the time of the discovery of the body it was in such an advanced state of decomposition that it was impossible to ascertain the manner in which he had been killed. His mule, pistol and clothing have not yet been found; the mule is, however, likely to turn up, as it had our hacienda brand 'U. S.' on the left shoulder. These facts were promptly laid before the commander of the Liberal troops at San Ignacio, Senor D. Jesus Vega, who took great interest in the matter and promised to use all the means in his power to discover the murderers and bring them to justice, and he has had arrested and placed in confinement two men charged with the crime, and his soldiers are in pursuit of the third. These we are assured will be tried by court martial, and if found guilty will be summarily executed. Mr. Grove, I think, lost his life by imprudence in talking; he had resided in Mexico for six or seven years, spoke the language quite fluently, and ought to have understood the character of the people. I had nominally purchased a train of pack mules in Mr. Grove's name and sent him to San Ignacio to obtain a permit for them to pack for me, and a guarantee that they would not be taken by the army; he succeeded in getting these documents and was on his way home to take possession of the mules and start them to packing; he passed the night previous to his death at the house of one Meliton, at Techamate, the place where you will recollect we stopped for dinner on our first trip up, where we had quite a quantity of watermelons. This man Meliton had a bad reputation, was some years ago convicted of murder and robbery and sentenced to be executed, but got clear by bribery. Grove told this man of his purchase of the pack train, and that he was to

pay $4000 for it, and was on his way to take possession of it and start it to work, thus leaving the impression that he had this sum of money with him. Now, whilst I do not think that Meliton committed the murder, I have no doubt of his having planned it and arranged for it to be done, and the imprudence of Mr. G. in telling this man the circumstances above mentioned, in my opinion, was the cause which led to his murder, which was effected between Techamate and Tenchuguilita, about midway between the two places." In a subsequent report to Garth under date of April 10, 1866, he said: "I wrote you fully in my last letter detailing the circumstances of the murder of William Grove and the finding of his body. Since then the Liberal authorities have taken the matter in hand and arrested one of the murderers at this place. The villain was actually *in our employ*, doubtless for the purpose of ascertaining when an opportunity should offer to waylay and murder another of our men if the prospect for plunder was sufficient to warrant the risk. When the officers arrested him I had him conveyed to the blacksmith shop and securely ironed. The next day he was conveyed to San Ignacio and thence to Cosala, where he was tried. We failed to convict him for the murder of Grove, but he was convicted for the murder of a woman, whom he killed previously, and sentenced to be shot, and before the execution of the sentence he confessed the murder of Grove, and revealed the names of his two confederates; these two would have been arrested before this but for the expulsion of the Liberals from the country. Now we will have to wait for the Imperialists to put their officers in power before we can act any further in the matter."

These letters were not before the Commission. If they had been, that body could not have attached any importance whatever to the statement in Bartholow's deposition of 1874 to the effect that the murder of Grove was committed by soldiers of the Republican Army, or to the charge in the Company's memorial that such murder "was made matter of boast by Mexican officials."

Another of the outrages alleged to have been committed

by the Mexican authorities and to have resulted in driving the La Abra Company from its property was described in the original evidence as the robbery of Scott, one of its employés. That evidence indicated that the robbery was by the military authorities then in control in the locality of the mines. Referring to "the military authorities of the Republic" under the command of General Corona, Bartholow stated in his deposition of 1874: "One of the employés of the Company, who had been sent to Mazatlan on business, was robbed by said military authorities, near Camacho, in Sinaloa, while on his return from Mazatlan to the Company's works, of eleven hundred and seventy-eight dollars of the moneys of the Company, which amount never was repaid to the Company, nor was the Company ever indemnified for the same in any way. I recollect the exact amount taken, because I entered the same on the books of the Company, charging the same to the 'robbery account,' where other 'prestamos' and robberies were entered. The name of this employé who was so robbed of the Company's money was George Scott, commonly called 'Scottie.' This transaction was nothing less than highway robbery by said troops, and was in addition to the several 'prestamos' levied and enforced by the military authorities, which, I have said, ranged from three to six hundred dollars. The amount of cash 'prestamos,' so levied and enforced during my said superintendence, amounted to a little more than three thousand dollars, but the value of the mule trains and supplies so taken from the Company by the said military, while I was superintendent, was not less than twenty-five thousand dollars."

The same incident was described in an affidavit made in 1870 by a witness for the Company named Clark, who was a contractor for the Company while Bartholow was in charge of its property. He said that he knew "of other abuses of said Company by the military authorities aforesaid; that in the early part of 1866 an employé of said Company, whose name, deponent believes, was George Scott, (called 'Scottie,') who was on his way from Mazatlan to the works of the Company in Durango, was met in the road by an armed party of

the said military between Mazatlan and deponent's residence in Camacho, and said armed party of troops, of the Republican army of Mexico, did, by force of arms, take from said Scott, or 'Scottie,' about twelve hundred out of three thousand dollars in gold coin, ($3000,) Mexican ounces, 187½ ounces, which money belonged to said 'La Abra Silver Mining Company,' and was being transported to said Company by the said 'Scottie,' who appealed to deponent to visit, with him, the headquarters of the army in that district, and to ask General Guerra to return said money, or to receipt for it, in order that he might have *something* to return to said company; that deponent did so visit General Guerra's headquarters with the said 'Scottie,' but was informed by the commanding officer that he could not give up said money. After said Scottie had wasted two or three days to obtain some kind of acknowledgment of the taking of said money, he became disgusted, and returned to report the facts to his Company at Tayoltita."

How differently this affair was regarded at the time by Bartholow is shown by his report to Garth, to be found in the letter book, under date of April 10, 1866. In that report Bartholow spoke of the difficulties he had met and overcome, and stated that a demand for taxes amounting to three or four thousand dollars had been easily met, after corresponding with the collector of taxes, by the payment of thirty dollars, and that there was no necessity of troubling General Corona with the matter. He proceeded: "In consequence of the unsettled state of the country and the presence of bands of robbers on and near the roads leading from here to the port, I have had a great deal of trouble to get money from time to time transported to pay my hands and other expenses, and in consequence I was, of course, unwilling to risk any very large sum at one time: yet, when we were getting timber and doing other work which required a great many Mexican laborers, we frequently needed $1000 per week, and of course all that the proceeds of the sales of goods did not supply had to be brought from Mazatlan, but I so managed it that we never had more than from $1500 to $2000 at risk at one time, and all came through safe except in one case. This

occurred some two weeks ago, when I sent Mr. Scott to San Ignacio to settle our taxes with the authorities. I gave him a check on Messrs. Echeguran, Quintana & Co., for $1000 to bring up. Besides this he had some money outside of this sum which was left after paying the taxes in San Ignacio. He got the money as directed and started out of Mazatlan to overtake a train which was bringing up some supplies for us and Mr. Rice, and when about twenty miles out from the port, near the town of Comacho, six or eight armed men sprang into the road and with their guns levelled upon him forced him to dismount, and robbed him of $1178 in money, his pantaloons and boots (the latter, however, being No. 12, were too large for any of the villains, and were returned). He immediately informed the nearest commander of the Liberal forces of the fact, who sent for him for the purpose of identifying the robbers. He complied, but could not find them, for the reason that the officer could not find even half his men. I also at the same time opened a correspondence with General Corona through the prefect, Colonel Jesus Vega, at San Ignacio, who by the way is, I think, one of the most perfect gentleman I have met in the country, and I am of the opinion that but for the turn in military affairs which occurred a few days since, we would in some way or other have been reimbursed for the loss, but now I have no hopes whatever, and we may as well charge up $1178 to profit and loss."

Can the statements in that report be reconciled with the declaration in the affidavit of Clark and in the deposition of Bartholow that the robbery of Scott was by the military authorities of the Republic under General Corona? We think not. The affair as described in that letter could never have been made the basis of a finding that would place the responsibility for this robbery upon the public authorities then holding control in Mexico.

We now refer to a matter occurring during the superintendency of De Lagnel. It was referred to in argument as the Valdespino forced loan. Alluding to this exaction in his deposition, taken in rebuttal while the case was being prepared for the Commission, and being asked whether it was paid by

him, and if not by whom, Exall said: "It is untrue that any part of it was paid by me, voluntarily or otherwise. I was not superintendent until September, 1866, and this loan was made in July, 1866, when Colonel De Lagnel was superintendent, as will be seen by the order addressed by said Valdespino to Colonel De Lagnel, and to the best of my recollection, the whole amount, $1200, was required of and paid by said De Lagnel." Granger, in whose charge the property was left by Exall in the spring of 1868, made an affidavit in 1870 which the Company used before the Commission in support of the charge that the Mexican authorities had imposed upon it forced loans or prestamos. He said: "Said Company was also forced to pay 'prestamos.' A letter was received by Colonel De Lagnel, superintendent of said Company, from Colonel Valdespino, of the Republican army of Mexico, dated July 27, 1866, and signed 'Jesus Valdespino,' which came into my possession as clerk of the Company, and which letter has never, since its receipt, passed out of my possession; and I now present the same to the consul, marked 'Exhibit Z.' This letter demands twelve hundred dollars ($1200) from said Company for the support of his forces, under his command. It is needless to say the demand was complied with."

Here we have a distinct assertion by the Company, through its witnesses, that this demand to pay $1200 was met by the Company. The fact was just the reverse, as must have been known to some of the representatives of the Company who were accredited by it to the Commission as witnesses having knowledge of the facts. On the day succeeding the receipt of Valdespino's letter Colonel De Lagnel wrote to the Gefe Politico of the San Dimas mines as follows: "In due time reached me your communication of yesterday in regard to a loan or tax which you exact from the residents of the district for the support of the forces of Colonel Valdespino, and having noticed the contents thereof I answer it forthwith. I send you part of the articles I have and which you ask me for, hoping that they be useful and acceptable to you. As regards the cash I am sorry to inform you that it is impossible for me to send you even a little, because I have not here the

necessary amount to defray my many and constant expenses. I request you to consider that this hacienda has brought the country thousands and thousands of dollars, most of which have been spent among the needy people of this district, and a considerable part in duties paid into the treasury of the district, under whose flag Colonel Valdespino is serving. As it is public and well known, not a single dollar have we received of this sum up to date. I send you two pieces of blue mohair and two pieces of bleached cotton, valued at sixty-five dollars and seventy-five cents, of which amount be pleased to send me the corresponding receipt, in order that it may serve me as a voucher to the Company I have the honor to represent." At the same time De Lagnel wrote to Colonel Valdespino: "Your favor of yesterday informs me of the sad situation in which you find yourself for the lack of resources and of your intention to procure them preparatory to leaving the district. Understanding the great need that you are in and considering, as you yourself state, the many evils that we would suffer if you should bring your forces here, I do all I can to overcome the difficulties, and I have sent to the political chief of the district two pieces of mohair and two of bleached cotton, those being the only things among the necessary things mentioned which I have. It is impossible for me to contribute with money in order to provide you with what you need today. Be pleased to consider that our reducing works are not complete, and therefore unproductive, without reckoning the many expenses that we yet have to make, the proximity of the rainy season, the scarcity of money, and the abnormal political situation, which cannot but cause us serious damages. I am not, therefore, in a condition to accede, as you desire, to the wishes of the political chief, but have sent him what I have, hoping that they be accepted as a token of my good will. I suppose that having contributed with what I can I may, as a matter of course, resume my work without fearing the interruption that would be caused by the arrival of armed forces." But this is not all the evidence on this point. De Lagnel, under date of July 31, 1866, wrote to Rice, the superintendent of the Company at San Dimas, saying: "As to the

forced, voluntary (?) loan, it was an impossibility to meet the demand, and I so stated in my note to the prefect."

If any additional evidence were needed to disprove the statement before the Commission that the Company by its agent had met and paid the levy of $1200 by Valdespino to be used in supporting his troops, it is found in De Lagnel's deposition taken in this cause. His attention being called to the reference in the letter book to this levy or forced loan, he said: "I received from the civil officer in San Dimas, and also at the same time from Colonel Valdespino, letters, both bearing on the same subject. He had come into the vicinity with a command of cavalry — Liberal cavalry — destitute. The mules were broken down by coming over the mountains. They wanted food and clothing and money, and they wrote to me, saying that they had apportioned it on the two mining companies, the one at San Dimas and the one with which I was connected, levying one quarter upon us, and the other half was to be borne by the citizens. I was advised to comply. They wanted $300, if I recollect right, in money. I didn't have the money to give them, and didn't intend to give it even if I had it. . . . I sent them a few goods — some stuff they wanted, blankets, and hats. I sent them some goods, cotton goods, and wrote a courteous note to each one of them, expressing regret that I could not comply with their wishes, and stating that we had no money, because the mines had never turned out a dollar. They wrote me an acknowledgment and sent a receipt for the goods and courteous acknowledgments. That was the end of it."

There are many other specific matters discussed in the elaborate briefs of counsel. To consider each of them and show the grounds upon which our conclusions rest would extend this opinion far beyond all proper limits. There were undoubtedly some unpleasant occurrences, such as the affair between Exall and Perez, a local judge, growing out of a misunderstanding by the latter of Exall's order to him to keep out of a particular room at the mines. But none of those occurrences had any real connection with the abandonment by the Company of its mining property in Mexico; and as is

evident from the new proof adduced in this cause, they were described by the Company and its witnesses in the testimony before the Commissioners in such exaggerated terms as to justify the charge of fraud made in the bill filed by the Government.

What does the letter-impression book disclose as the real cause of the Company's abandonment of its mines?

In the reports made by Bartholow, the first superintendent, to Garth of February 6, March 7 and April 10, 1866, no statement is made which even by inference showed that any difficulties were in his way that had their origin in the acts or conduct of the public civil or military authorities of Mexico. On the contrary, one letter shows that he obtained military protection for the mill transported from Mazatlan to the mines, and another one that he had pleasant relations with the civil and military authorities of the locality.

Looking next at the reports of De Lagnel, the second superintendent, we find a letter of July 6, 1866, from him to Garth, showing that there was then a heavy outstanding indebtedness against the Company that compelled the superintendent not only to lessen expenditures, but to reduce the working force nearly one half, and pay the workmen for their services one half in cash and one half in goods. Under date of October 8, 1866, De Lagnel wrote: "I am troubled exceedingly that better success has not attended my efforts, but the rainy season has proven a sore trial to my patience and been a serious drawback. I have striven to meet your wishes and expectations, and regret that my success has not been commensurate with my efforts to serve you and discharge my duties. As to sending a successor, I deem it best to tell you now that no money could tempt me to remain in this country longer than next 1st March." On the 17th of November, 1866, De Lagnel wrote from Mazatlan to Garth: "Had nothing occurred to interrupt the work, I feel sure that at this time the mill would be in operation, and the proofs at last being developed. Unfortunately, I was unable in September or October to communicate with this place; and the ready money giving out at the hacienda, the workmen (not miners)

refused to continue and left, thus bringing the ditch-work to a standstill. . . . In the utter impossibility of obtaining aid here, I have, despite the tone of your letters, drawn upon you for the sum of seven thousand dollars. I feel sure that you will experience no greater feeling of annoyance in receiving the intelligence than I do in communicating the fact; but after debating the thing long and carefully, I am satisfied that it is the best course to pursue. Longer delay in executing the work would be most injurious, perhaps fatal. . . . At present the mine is, I may say, *bare of metal.* A few days before I left metal had been struck again, but in so small a quantity as to forbid much hope."

Under date of January 5, 1867, De Lagnel wrote again to Garth from Mazatlan: "In your latest letter, the 20 Nov'r, you there informed me that you can meet no further drafts upon you; yet I had already, about the 17 Nov'r, drawn on you as treasurer for the sum of seven thousand dollars. I wrote to you fully by the same mail, and hoped to be able to send the letter via Acapulco, and thus reach you before the draft. In this I was disappointed, and my letters having gone via S. Francisco will reach you at the same time that the d'ft comes in for payment. I trust that, despite what you say, you will find some way to satisfy the draft, for if it goes to protest it will be of incalculable injury to the best interests of the Co. To me the consequences of such a thing would be both mortifying and most embarrassing, but to the Comp'y's interest they would prove far more serious. It is therefore that I urge upon your serious consideration the interest at stake, and pray that a prompt settlement be given upon presentation."

De Lagnel was again in Mazatlan on February 5, 1867, and on that day wrote to Garth, saying: "I had hoped, and fully expected, to be able by this time to send forward some return for the outlay incurred by the Company in the prosecution of its enterprise; but am disappointed in not yet having succeeded in bringing on the water in sufficient quantity to drive all the machinery. . . . The supplies laid in during the past year being in great part exhausted, and a new supply

being absolutely necessary to keep the mines, etc., going, and there being necessity for ready money in order to purchase the requisite supplies, I have drawn upon you for seven thousand five hundred dollars in favor of the Bank of California. This I would not have done had it been possible to do otherwise; but no assistance can be had in this country. I have satisfied myself on this point, and had only the alternative to stop operations or draw on you."

We come now to the period during which Exall was superintendent. His reports to Garth, as the representative of the Company, and Garth's letters to him, make it clear that its bankruptcy was all the time imminent, and that the time was near at hand when all work at the mines would be suspended, not because any obstacles were put in the way of the Company by the Mexican authorities, but solely because it was without money to employ in developing the property.

The first letter written by Exall shows that the financial situation at the mines was such as to require the utmost economy on the part of the Company's superintendent.

Under date of May 6, 1867, after De Lagnel departed for New York, Exall wrote: "I have, as far as I think safe, reduced the number of hands at the mines, keeping only a sufficient number to show that they are still being worked. I have a light force in the Christo; no improvement in the metal; a light force in the La Luz; the metal about the same. . . . I have discharged a greater portion of the Hacienda hands."

On the 10th of May, 1867, Garth wrote to Exall a letter in which, after expressing the hope that De Lagnel would soon arrive at New York, he said: "The affairs of the Company here are much embarrassed; a few of the directors have advanced all the money to carry on the operations and have been nearly ruined by it, and are not able to afford any further aid from here, and look anxiously to be reimbursed very soon from the products of the mine, and it is hoped that your best energies will be exerted to afford relief."

Again, under date of May 20, 1867, Garth wrote to Exall, and referring to De Lagnel's draft for $7500 said: "This draft

arrived on 2d April last, and was paid by one of the directors of the Company, as it was considered that was *surely the last* that would be needed, and we expected to return the money by an early remittance of bullion from Mexico. You can judge of our surprise and chagrin, when the last steamer arrived, instead of bringing Colonel De L. with some fruits of our works, a draft for $5000 in gold was presented for payment by Lees & Waller, drawn by De Lagnel, favor Bank California, and dated 10th April last, and of which we had not received any notice or advice whatever, and have not yet received any. As I had so often and fully advised the superintendent of the condition of affairs here and requested him not to draw further, I was much surprised that he did so, and that without giving any notice or reason for so doing. As it was found impossible to raise the means to pay this draft, it was protested and returned unpaid, and you must make some provisions for its payment when it gets back. I do trust that before that date you will have plenty of means to do so. I would now again repeat that I have made every effort possible to raise the money here and have failed, and I have advanced all I can possibly do, and the other directors have done the same; the stockholders will do nothing, and it is probable the Company will have to be sold out and reorganized."

This was followed by a letter from Garth to Exall of date May 30, 1867, in which it was said: "We wrote to you on the 20th instant, informing you that we had nothing from you or Colonel De Lagnel, but that a draft drawn by Colonel De L. from Mazatlan, 10th April last, had been presented, and there being no funds on hand, and no means here of meeting it, that it was protested and returned not paid; it is hoped by the time it gets back you will be prepared to meet it. Since my last letter Colonel De Lagnel has arrived and made known to us something of the state of things with you. I must confess that we are amazed at the results; it seems to me incredible that every one should have been so deceived in regard to the value of the ore, and I can but still hope that the true process of extracting the silver has not been pursued, and that before this time better results have been attained. . . . All ex-

penses must be cut down to the lowest point, and you and Mr. Cullins must try and bring this enterprise into paying condition if the thing is possible — at any rate, no further aid can be rendered from here, and what you need must come from the resources you now have. Neither must you run into debt; cut down expenses to amount you can realize from the mines. I cannot yet say what can be done in the future; no meeting of the stockholders has been held, and nothing done to pay off the debts here, now pressing on the Company. For the present, all I can say is that the whole matter is with you; take care of the interests and property of the Company; don't get it involved in debt, and advise us fully of what you are doing."

Garth wrote again, June 10, 1867: "We have not heard from you since Colonel De Lagnel left Mexico, but hope that you are well and getting along as well as could be expected. The account that Colonel De L. gave us of the quality of the ores on hand was most unexpected and a fearful blow to our hopes. We trust however that a fuller examination will show better results. We have in previous letters to you and to De Lagnel so fully informed you of the condition of affairs here that it is hardly necessary to say anything further on that subject. There is no money in the treasury, and we have no means of raising any, and a few of us have already advanced all that we can do, and you have been advised that the draft last drawn by De L., on 10th April, was returned protested, and I hope you will be able to take it up when it gets back promptly. Everything now depends upon you and upon your judgment, energy, prudence and good management of the resources in your hands, and we hope you will be able to command success."

So straightened were the circumstances of the Company at that time that it was sued in New York on promissory notes past due, (one of the notes being held by an assignee of Garth,) and it permitted judgment on them by default in July, 1867, for the sum of $53,653.50. Manifestly that suit was instituted with the consent, if not by the direction, of the officers of the Company who had charge of its affairs in New

York, who were aware of its financial embarrassments and knew that it must soon suspend business and go into liquidation.

By a letter of June 11, 1867, Garth was informed by Exall that he had been compelled to draw on him for $3000. The latter's letter of July 13, 1867, expressed regret that the draft made by De Lagnel before he left for New York could not be paid, and stated: "All your previous letters to me were to follow out the instructions given to Colonel De L. I took charge of affairs at a time when the expenditure of money was absolutely necessary to purchase supplies for the rainy season. Colonel De L. left me with only moderate means to buy these various supplies; pay't of sundry bills which were coming due, and pay of the workmen who had accounts of three, four and six months' standing."

On the 10th of July, 1867, Garth wrote to Exall: "I had this pleasure on 30th May and 10th June last, after the return of Colonel De Lagnel, and we had learned something of the condition of affairs in Mexico. In these, as well as in preceding letters, you were fully advised of the condition of the Company here; that there had been no funds in the treasury for a long time; that appeals had been made in vain for aid to the stockholders, and that the parties here who had made heavy advances to the Company were anxious for its return, and refused to make any further payments; and that the draft for $5000 drawn on me as treasurer by Colonel De Lagnel, on the 10th April last, had been protested and returned to California, and, we suppose, to parties in Mazatlan who advanced the money on it, and who would have to look to you for payment of same; and we expressed the hope that by that time you would have taken out sufficient money to meet it and all other expenses, and hoped soon to have a remittance of bullion from you to aid in payment of the large indebtedness here. . . . You will see, from all my letters, that no further aid can be given you from here, and that you must rely upon the resources you now have, and which, we think, ought to be ample to pay off the debts and to sustain you in current expenses, which you should cut down to the

lowest possible point. . . . Don't run into debt or get into difficulty with the authorities, if there are any such things existing; but at the same time be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government."

Garth wrote again on the 20th of July, 1867: "The steamer is just starting, and I have only time to say that your letter of the 11th, by private hand, has been rec'd, advising us that you had drawn on me for $3000 gold. In former letters you will have learned the condition of things here, and that there is no money to pay same, and that former dr'ft of De Lagnel has been returned unpaid, and that you were urged to try and get along with what resources you had. These letters, no doubt, reached you in time to prevent your drawing, as no draft has been presented, and we hope by this time there is no necessity for doing so."

Under date of October 6, 1867, Exall wrote to Garth: "By this steamer I am in receipt of yours of 10th and 20th of July and 10th of August. I was much disappointed that my urgent demand for money was not favorably answered. I have complied with the requests in your various letters in reference to giving you exact information concerning affairs here. I now have to urge you to send me means. I have heretofore been keeping above water by using the stock which I fortunately had on hand; that is now entirely exhausted. I have neither money, stock or credit. This latter I would not use even if I had it, as in this country it is an individual obligation and no company affair. Now, you must either prepare to lose your property here or send me money to hold it (and that speedily) and pay off debts of the concern. I have worked as economically as possible and have cut down expenses to the lowest point. . . . I am working the mines with as few hands as possible. What little good metal is taken out amounts to almost nothing. The $5000 draft of De Lagnel's was sent to a house in this place to be collected, with instruc-

tions to seize the property in case it was not paid. It troubled me a great deal, and I had much difficulty in warding it off. The concern to whom the draft was sent showed me his instructions and also the original draft. Fortunately for the Company there was a flaw in the draft; De Lagnel failed to sign his position, as superintendent of the La Abra Silver Mining Company; simply signed his name, making it an individual affair. This was the only thing that kept them from seizing the property. I told them they could do nothing with the property here, as the Company were not obligated on the draft. I have exhausted all the ore that I had on hand that was worth working. That which I worked was very poor and the yield small. The La Luz, on the patio, won't pay to throw it into the river. I have had numerous assays made from all parts of each pile; the returns won't pay. Amparas are not now granted, and mines are to be held only by working. I am compelled to keep men in mines which yield nothing, merely to hold them. This I can do no longer, as I have nothing to give the men for their labor, and must now take the chances and leave the mines unprotected."

The same letter contains a statement as to the situation which contrasts most strangely with the charge that the Company was prevented from successfully working its mines by the conduct of the Mexican authorities. That statement was: "By next steamer will send you full statements of past months. The returns from Durango were small. I turned it over to E. P. & Co., as I was owing them. There is no difficulties about authorities, boundaries or anything else concerning the mines and hacienda, provided there is money in hand, and *money must* be sent. I hope I have urged this point sufficiently so that you may see fit to send me something to hold the mines. I should be sorry to see them lost on this account. Please telegraph me if you intend sending money? I fear that before I can get a reply to this something may have occurred. Of course, Colonel De Lagnel informed you the conditions and terms on which I took charge of affairs here, which was the same that he was getting, and if I had known at the time what difficulties I was going to have in procuring

means to keep the concern in motion, I would have refused on any terms. I am much in need of money, as I wish to use it here. I will, in a month or so, draw on you through Wells, Fargo & Co., San Francisco, for $1500 — please inform me by earliest opportunity that you will meet the draft. . . . I hope that before this reaches you some steps will have been taken to procure means to operate with."

On the 10th of October, 1867, Garth wrote to Exall: "I am very sorry to say that it is not possible to aid you from here, and that you must rely entirely upon the resources of the mines and mill to keep you going and to relieve you of debts heretofore contracted. It is not possible for us to direct any particular course for you, but only to urge you to try and work along as well as you can, cutting down expenses and avoid embarrassing yourself with debts. The Bank of California has again sent Colonel De Lagnel's draft here for collection, but it was not possible to pay same, and it will have to return to Mexico, and we do hope you will be able to make some satisfactory arrangement to pay it."

Under date of November 17, 1867, Exall wrote to Garth from Mazatlan: "Yours of the 30th September is just at hand, and contrary to my expectations, contains nothing of an encouraging nature. I expected after having previously written so positively in reference to the critical state of affairs with me, that you would have sent me by *this mail* some means to relieve me from my embarrassing position. I have in former letters laid before you the difficulties under which I was laboring and begged that you would send me means, and was relying much on the present mail, expecting that some notice would have been taken of my urgent demands for assistance to protect the property belonging to the Company. To add to my further embarrassment, Mr. Cullins, whose time expired on the 16th inst. — since my leaving Tayoltita — (I left there on the 10th for this point), intends to commence suit in the courts here for his year's salary. I am endeavoring to get him to delay proceedings until the arrival of the next steamer (don't know as yet if I will succeed in getting him to delay), when I hope you will have seen the necessity of acting

decidedly and sending means to prosecute the works and pay off the debts of the Company, or abandoning the enterprise at once. Nothing can be done without a further expenditure of money. I am now doing little or nothing in the mines, and will, when I return, discharge the few men who are now at work in them. This I am compelled to do, as I have no money, and my stock is almost entirely exhausted, and I fear if money isn't very soon sent some of the mines will become open to denouncement. In my last letter I mentioned the amount required for immediate demands, $3000, which must be sent out. By next steamer Mr. Elder, Slone and Cullins, if paid off will sail for San Francisco; if not paid off, suit will be commenced, and as I have no means to defend the case, fear it will go against me. When these parties leave, the hacienda will be left almost entirely alone, there being only myself, Mr. Granger, who I am also owing, and I away most of the time. What you intend doing must be done promptly. Please send me Mr. Cullins' contract with you. The political state of the country just now is rather discouraging. I hope by the time this reaches you you will have rec'd statement sent. Everything at mines as it was when I last wrote, only more gloomy in appearance on ac't of not being able to employ the people and put things in operation. *Please do something immediately*, and inform me as speedily as possible."

Still relief did not come to Exall and he again wrote to Garth from Mazatlan, under date of December 18, 1867, a most urgent letter. It is here given in full: "I arrived here a few days since. Received by steamer yours of October 10, informing me of your inability to send me the means to operate with and meet my obligations. I have in previous letters expressed the condition of affairs with me, and begged that you would do something. Thus far I have been able to protect your interests here, but affairs have gotten to such a point that I am unable to do so longer without money. Mr. Cullins, who I informed you in a former letter would leave, insisted upon doing so by this steamer. He demands a settlement, otherwise he will immediately commence suit, and had made preparations to do so. To keep the matter from the courts

I was compelled to borrow money to pay him off. The balance due him, and the amount I had to borrow here, was $1492. He has troubled me a great deal — has been exceedingly unreasonable. On yesterday the agent of the Bank of California informed me that he received the draft by the last steamer (which arrived a few days ago), and would immediately commence legal proceedings, and sent the draft on to the courts here. I am utterly unable to oppose them; first, I have no means, and, again, I am not your agent here, never having received a power of attorney from you, which will be necessary, for I cannot act in these courts without it. The Bank of California —— and will do something to recover the amount of the draft before the amount is doubled by the expenses. For God's sake telegraph to pay them. Matters of this nature once getting in these courts it takes large sums to oppose them. The first steps taken by the courts will be to send some one to the hacienda to see to and secure everything there. This will, of course, stop everything and make it impossible for me to protect your interests. For your own sake in the matter pay them before things go further. My position is extremely embarrassing, and I know not what to do, and will have to be guided entirely by circumstances. I will, of course, do everything in my power, and may have to act in a very cautious manner, and will probably act in a manner which may occasion censure. Now, all I ask of you is to judge my actions justly, and consider my circumstances, and believe I am doing the best for your interests. I am doing nothing at the mines, and have only one person left with me. Please attend to this matter promptly. I am writing very hurriedly, as there is a war steamer just leaving for San Francisco, which will arrive there some days prior to the regular mail. I leave for the mines in a few hours. Attend to this at once and telegraph me."

Exall still failed to hear anything of an encouraging character from the Company. He again wrote most urgently to Garth on the 24th day of January, 1868, as follows: "I came down to meet steamer from San Francisco, in hopes of receiving letters from you; I received none, and now, being entirely

out of funds and stock, and being sued by agents from Bank of California for the payment, have to let things take their own course, as I am unable longer to protect your interests here. In previous letters I have given you a full and detailed account of affairs here, and such frequent repetitions I find useless, and will simply state that I am doing nothing whatever at the mines, and cannot until I receive money to operate with. I haven't means to protest now and they are liable to be denounced at any moment. Some months since I wrote you for titles; the government demanded them; they have not been received. By steamer I sent you a telegram from San Francisco; no reply. The parties I sent the dispatch to in San Francisco sent it on to New York. I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them. If by next steamer I receive no assistance from you, I intend leaving for the East. I will go via San Francisco, will from there telegraph you what further steps I shall take. I have been doing everything in my power to keep the Bank of California from getting possession; thus far have succeeded, but can prevent them no longer, and fear they will eventually have their own way. Mr. Cullins (who is not the man he was represented to be) left by last steamer. I have only one man now; am compelled to keep some one. Please telegraph me in San Francisco, care of Weil & Co., immediately on receipt of this. You can judge by what has been done in New York and send me whether or not I may have left. Please let me know your intentions."

The situation had become financially so discouraging to Exall that he determined to leave the mines and return to New York. So under date of February 26, 1868, he wrote to James Granger, who sometimes called himself Santiago Granger and who was at the mines, this letter: "As circumstances are of such a nature as to compel me to leave for San Francisco, and probably for New York to inquire into the intentions of this company, I place in your hands the care and charge of the affairs of the La Abra S. M. Co.; together with

its property. You are invested hereby with all power confided to me, of course, acting in all your transactions with an eye to the interests of the Company. This will, to you, should occasion require it, be ample evidence of the right possessed by you to act in their behalf." Notwithstanding the execution of this paper, Exall testified in his deposition taken before the Commission in 1874 as follows: "I did not leave said mines, hacienda or property in charge of said Granger, or any other person, nor did I give any charge, control, power or authority of or over the same, or any part of the same, to him, or any one else, and if he, or any other person, has taken charge or control of said mines, hacienda and property, or of any of it, or has sold, used or in any way disposed of any of it, each of such acts was without any power or authority, or right whatever to do so, so far as any act by me or for me, or on my part, as superintendent or otherwise, is concerned." We also find in the record a letter from Exall, written from New York to Granger under date of May 8, 1868, in which the writer says: "Of course, on the first day of my arrival here, I saw nothing of the Company. The day after I went down and saw Garth. Had a long talk concerning affairs, and, contrary to our expectations, gave me no satisfaction; didn't seem to intend to do anything more. I have seen him several times, but have got nothing from him of an encouraging nature. He seems disgusted with the enterprise, and, so far as regards himself, intends to do nothing more, or have nothing more to do with it. . . . I wish I could send you some means to get along with, knowing you must be having quite a rough time, but am unable. I expected to be paid up here; its not having been done plays the devil with my arrangements." Among the letters now produced in evidence is one from Granger, written from Tayoltita under date of August 12, 1868, to Señor Don Remegio Rocha. That letter was in these words: "I have received the communication calling upon this Company to pay $52.50 each month for taxes imposed by the legislature of the State, and presume it to be correct; but as I am only acting in the absence of the superintendent, and as there is no money nor

effects to pay this tax, I beg you to wait until the month of November, at which time said superintendent is to come, and then the sums due by this Company on account of this tax will be paid."

From the above and other evidence in the record it is certain that before the La Abra Company ceased to work the mining property it had become utterly bankrupt, and that its abandonment of all operations at the mines was due to its inability from want of funds to carry them on and to the belief, founded upon the experience of two years and more, that the mines, if not entirely worthless, were not of sufficient value to justify its owners in proceeding further in their development. If the proper working of the mines while Bartholow, De Lagnel and Exall were successively in charge of them was prevented by the acts or omissions of duty on the part of the public authorities of Mexico, surely that fact would have been disclosed by the letters or reports made to the Company by its several superintendents. The demand made during that time by the Company's representatives in charge of the mines was not for military or civil protection, but for the money needed to develop the property and to meet the debts incurred at the mines during the progress of the work there. We do not doubt that the situation was accurately described by Exall when in the above letter to Garth of October 6, 1867, he reported that "there are no difficulties about authorities, boundaries or anything else concerning the mines and hacienda, provided there is money on hand, and *money must* be sent;" and when in his letter of November 17, 1867, he endeavored to impress Garth with "the necessity of acting decidedly and sending means to prosecute the works and pay off the debts of the Company, or abandoning the enterprise at once." In that condition of affairs, it is not strange that Exall in the letter of January 24, 1868, just before he left Mexico for New York, wrote to Garth: "I am owing considerable and no means of paying. What is your intention? Is it to let your interests here go to the dogs? You have either to do this or send money out to protect them." We have seen that Garth, as the representative of the Company, in

a letter to Exall, dated July 10, 1867, warned him against running into debt and getting into difficulty with the authorities, "if there are any such things existing;" "but," he continued, "at the same time be firm in maintaining your rights, and don't submit to imposition except by force, and then make a legal and formal protest as a citizen of the United States and as an American company duly organized and prosecuting a legitimate business under the protection of the law, and our rights will be protected by our Government." Now, it does not appear that there was any formal protest before the United States Consul at Mazatlan by any representative of the Company to the effect that the Mexican authorities had so acted or failed in duty as to compel it to abandon its property in Mexico. If the Company's superintendents had any such view of the situation when they returned to the United States and gave an account of their management of the property, how natural it would have been for the Company, in some formal way, to have promptly brought the whole matter to the attention of the Government of the United States, and sought its aid in order to have justice done to them by the Republic of Mexico. No such course was taken, and we cannot doubt, in view of the evidence adduced after the Commission made its award, in connection with the evidence before that tribunal, that the idea of attributing the losses of the Company to the wrongful conduct of the Mexican authorities never occurred to the Company until after the organization of the Commission, long after the arrival of Exall in New York. In March, 1870, the Company for the first time gave notice to the Department of State that it had any claim against the Republic of Mexico. It then claimed only $1,930,000. A few months later it increased its claim to $3,000,030, and before the Commission concluded its labors it amended its claim and fixed it at $3,962,000.

One point in connection with the letter-impression book cannot be passed without notice. It is contended that what passed between Garth and the superintendents in charge of the property, in the form of letters or reports by the latter to the former, was not admissible in evidence against the Com-

pany. This proposition cannot be sustained. The superintendents placed at the mines were its representatives in charge of the Company's property. What they did at the locality of the property in and about its management were the acts of the Company, so far as those acts were within the scope of the business intrusted to them. So what they said while engaged in managing and with reference to the management of the property, particularly what they reported to their principal in respect to the condition of the property and their acts in the course of the business, constitute part of the *res gestæ* of the controversy between the parties. The vital inquiry in this cause is whether the Company's representatives at the mines were prevented by the Mexican authorities from developing and working them, whereby it was forced to abandon the property. Surely, what those representatives said and did or forebore to do at the mines, bearing upon that inquiry, would have been part of the *res gestæ* and admissible in evidence against the Company. Upon like ground, their written reports or letters to the Company while in charge of the property and in respect of its management are admissible in evidence so far as they bear upon the same inquiry and constitute a part of the *res gestæ*. The rule, we think, is accurately stated by Greenleaf, who, after saying that the act or declaration of each member of a partnership in furtherance of the common object of the association is the act of all, because by the very act of association each one is constituted the agent of all in respect of the common business, says: "A kindred principle governs in regard to the declarations of agents. The principal constitutes the agent his representative, in the transaction of certain business; whatever therefore the agent does, in the prosecution of that business, is the act of the principal, whom he represents. And 'where the acts of the agent will bind the principal, there his representations, declarations and admissions, respecting the subject-matter, will also bind him, if made at the same time, and constituting part of the *res gestæ*.' They are of the nature of original evidence, and not of hearsay; the representation or statement of the agent, in such cases, being the ultimate fact to be proved, and not an admission of

some other fact. But, it must be remembered, that the admission of the agent cannot always be assimilated to the admission of the principal. The party's own admission, whenever made, may be given in evidence against him; but the admission or declaration of his agent binds him only when it is made during the continuance of the agency in regard to a transaction then depending *et dum fervet opus.* It is because it is a verbal act, and part of the *res gestæ*, that it is admissible at all; and therefore it is not necessary to call the agent himself to prove it: but wherever what he did is admissible in evidence, there it is competent to prove what he said about the act while he was doing it; and it follows that where his right to act in the particular matter in question has ceased, the principal can no longer be affected by his declarations, they being mere hearsay." 1 Greenl. Ev., § 113. See also Story on Agency, § 134.

Upon a careful scrutiny of all the evidence we are of opinion that so far from the Mexican Government being legally responsible for the losses falling upon the Company, its investment was without profitable results, because the Company did not have or did not furnish to its superintendents at the mines the funds required for their successful development, and did not find the property to be as valuable as they had supposed. All this is apparent from the reports made from time to time to the Company by its superintendents, duplicate originals of which are to be found in the letter-impression book which was not before the Commission. The identity of that book is fully established and the Mexican Republic is not fairly chargeable with negligence in not having discovered it sooner. It is certain that that Government, within a reasonable time after it received the book, delivered it to the Department of State, and called attention to the important and vital facts disclosed by it, so that the United States could take such action as its sense of duty suggested.

Our conclusion is that the question stated in the act of 1892 — whether the award in question "was obtained as to the whole sum included therein, or as to any part thereof, by fraud effectuated by means of false swearing or other false

and fraudulent practices on the part of the said La Abra Silver Mining Company, or its agents, attorneys or assigns" — must be answered in the affirmative as to the whole sum included in the award. That Company placed before the Commission a state of facts that had no existence, and which we are constrained by the evidence to say its principal representatives must have known had no existence, but which being credited by the Commission under the evidence adduced before it brought about the result complained of in the bill. The whole story of losses accruing to that Company by reason of wrongs done by the authorities of Mexico, is, under the evidence, improbable and unfounded. We do not wish to be understood as saying that the Company did not meet with losses on account of its investments in this mining property. But we do adjudge that it had no claim which, upon any principle of law or equity, it was entitled to assert against the Republic of Mexico.

The decree below is *Affirmed.*

MR. JUSTICE GRAY did not hear the argument on the facts and took no part in their consideration. MR. JUSTICE MCKENNA took no part in the decision.